

***United States Court of Appeals
for the Second Circuit***



APPENDIX

No. 75-6107

United States Court of Appeals

FOR THE SECOND CIRCUIT

SIDNEY DANIELSON, Regional Director, Region 2
of the National Labor Relations Board, for and on
behalf of the NATIONAL LABOR RELATIONS BOARD,

Petitioner,

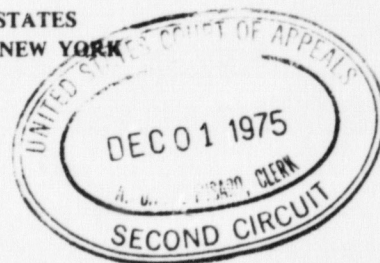
v

FUR DRESSERS, LOCAL NO. 2F, AMALGAMATED MEAT CUTTERS
AND BUTCHERS WORKMEN OF NORTH AMERICA, AFL-CIO: and
FUR FLOORWORKERS UNION, LOCAL NO. 3F, AMALGAMATED
MEAT CUTTERS AND BUTCHERS WORKMEN OF NORTH AMERICA,
AFL-CIO: and JOINT BOARD OF FUR LEATHER AND MACHINE
WORKERS, AMALGAMATED WORKMEN OF NORTH AMERICA, AFL-
CIO,

Respondents.

ON APPEAL FROM THE ORDER OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK
DENYING INJUNCTIVE RELIEF

APPENDIX



JOSEPH E. MAYER
Assistant General Counsel,
National Labor Relations Board.
Washington, D.C. 20570

PAGINATION AS IN ORIGINAL COPY

(i)

INDEX

	<u>Page</u>
INDEX TO THE RECORD ON APPEAL	1
ORDER TO SHOW CAUSE FOR TEMPORARY INJUNCTION, dated July, 1975	3
PETITION FOR INJUNCTION UNDER SECTION 10(1) OF THE NATIONAL LABOR RELATIONS ACT, AS AMENDED, dated July, 1975	4
EXHIBIT 1 Charge Against Labor Organization or its Agents, dated May 13, 1975	10
EXHIBIT 2 Charge Against Labor Organization or its Agents, dated July 10, 1975	11
Attachment	12
SETTLEMENT AGREEMENT, dated May 20, 1975	14
NOTICE TO MEMBERS, undated	15
ANSWER OF RESPONDENTS LOCALS 2F and 3F, undated	16
ANSWER OF RESPONDENT FLM JOINT BOARD, undated	20
AFFIDAVIT AND TENDER, dated August 19, 1975	25
RESPONDENTS' JOINT MEMORANDUM FOR DISMISSAL OF PETITION FOR §10(1) INJUNCTION, dated August 12, 1975	28
TRANSCRIPT OF PROCEEDINGS, dated August 27, 1975	Tr. Page 1 49

(ii)

**TRANSCRIPT OF PROCEEDINGS,
dated August 27, 1975**

Witnesses:

Irvin H. Hecht		
Direct	3	50
Philip Fabrykant,		
Direct	12	56
Cross	46	75

**TRANSCRIPT OF PROCEEDINGS,
dated September 2, 1975**

Witnesses:

Philip Fabrykant		
Cross (Resumed)	64	85
Redirect	102	110
Henry Foner		
Direct	117	119
Cross	124	124
Howard Fertell		
Direct	131	128
Cross	135	131

**OPINION AND ORDER,
dated October 3, 1975** 135

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----x
SIDNEY DANIELSON, Regional Director,
Region 2 of the National Labor Relations
Board, for and on behalf of the NATIONAL
LABOR RELATIONS BOARD,
PETITIONER--APPELLANT

v.

FUR DRESSERS, LOCAL NO. 2F, AMAL-
GAMATED MEAT CUTTERS AND BUTCHERS
WORKMEN OF NORTH AMERICA, AFL-CIO;
and FUR FLOORWORKERS UNION, LOCAL
NO. 3F, AMALGAMATED MEAT CUTTERS
AND BUTCHERS WORKMEN OF NORTH
AMERICA, AFL-CIO; and JOINT BOARD OF
FUR LEATHER AND MACHINE WORKERS,
AMALGAMATED MEAT CUTTERS AND
BUTCHERS WORKMEN OF NORTH AMERICA,
AFL-CIO,

RESPONDENTS--APPELLEES

UNITED STATES DISTRICT
COURT FOR THE SOUTH-
ERN DISTRICT OF NEW
YORK

CASE NO. 75 Civil 3438

JUDGE Kevin T. Duffy

-----x
INDEX TO THE RECORD ON APPEAL

Certified copy of docket entries.
Petition for Injunction.
Order to Show Cause and Petition for Injunction.
Petitioner's Memorandum on Points of Law and
Authorities.
Petitioner's Notice of Motion that Deposition not be
Taken; Affidavit in support of said motion;
Respondent FLM Joint Board's Notice to Take
Deposition of Petitioner; Court Order on above
motion (appearing as endorsement).

DOCUMENTS

A and B

1

2

3

4

Respondent FLM Joint Board's Memorandum in Opposition to Motion to Quash Taking of Deposition (4 above)	5
Respondent Locals 2F & 3F's Notice to Take Deposition of Philip Fabrykant.	6
Respondent Locals 2F & 3F's notice to take deposition of Milton Mainwald.	7
Answer of Respondents Locals 2F & 3F.	8
Affidavit and Tender of Respondents Locals 2F & 3F.	9
Answer of Respondent FLM Joint Board.	10
Respondents' Joint Memorandum for Dismissal.	11
Petitioner's August 27, 1975 Reply Memorandum (letter).	12
Petitioner's September 3, 1975 Memorandum of Law (letter).	13
Petitioner's Notice of Settlement and Proposed Order Granting Permanent Injunction.	14
Transcript of Record of Proceedings - August 27, 1974.	15
Transcript of Record of Proceedings - September 2, 1975.	16
Opinion and Order No. 43202	17
Petitioner's Notice of Appeal and Certificate of Service	18
Stipulation Re Exhibits	19
Clerk's Certificate	20

EXHIBITS

In accordance with the stipulation among the parties, a copy of which is attached hereto, the exhibits which constitute the record on appeal are as follows:

Petitioner's Exhibit 1	Unfair Labor Practice Charge dated 5/13/75.
Petitioner's Exhibit 2	Unfair Labor Practice Charge dated 7/10/75.

[July, 1975]

* * * * *

ORDER TO SHOW CAUSE FOR TEMPORARY INJUNCTION

The petition and affidavit of Sidney Danielson, Regional Director, Region 2 of the National Labor Relations Board, having been filed pursuant to Section 10(1) of the National Labor Relations Act (61 Stat. 149; 73 Stat. 544; 29 U.S.C. Sec. 160(1)) praying for issuance of an order directing respondents to show cause why an injunction should not issue enjoining and restraining said respondents from engaging in certain acts and conduct in violation of said Act pending the final disposition of the matters involved pending before the Board, and good cause appearing therefore.

IT IS ORDERED that respondents appear before this Court, at the United States Courthouse, Room , Foley Square, New York, New York on the day of July 1975, at a.m., or as soon thereafter as counsel can be heard, and then and there show cause, if any there be why, pending the final disposition of the matters involved pending before the National Labor Relations Board, respondents, their officers, representatives, agents, servants, employees, attorneys, and all members and persons acting in concert or participation with it or them should not be enjoined and restrained as prayed in said petition; and

IT FURTHER IS ORDERED that if respondents file answers to the allegations of said petition with the Clerk of this Court, a copy thereof shall be served upon petitioner at his office located at 26 Federal Plaza, Room 3614, New York, New York, on or before the day of July 1975.

IT FURTHER IS ORDERED that a copy of this order, together with a copy of the petition and exhibits upon which it is issued, shall be served by personal service on or before the day of July 1975 upon respondents and upon South American Fur and Skin Co., Inc., by a representative designated by petitioner, and that proof of such service be filed herein; and

IT FURTHER IS ORDERED that memoranda in support of, and in opposition to, the within application may be served and filed by the parties by twelve o'clock noon on the day before the time fixed by the Court upon the return of this application for the hearing thereon.

Done at New York, New York, this day of July 1975.

United States District Judge

[July, 1975]

* * * * *

PETITION FOR INJUNCTION UNDER SECTION 10(1) OF
THE NATIONAL LABOR RELATIONS ACT, AS AMENDED

To the Honorable, the Judges of the United States District Court for the Southern District of New York:

Comes now Sidney Danielson, Regional Director, Region 2 of the National Labor Relations Board (herein called the Board), and petitions this Court for and on behalf of the Board, pursuant to Section 10(1) of the National Labor Relations Act, as amended (61 Stat. 149; 73 Stat. 544; 29 U.S.C. Sec. 160)1); herein called the Act), for appropriate injunctive relief pending the final disposition of the matters involved herein pending before the Board on a charge alleging that respondents have engaged in, and are engaging in, acts and conduct in violation of Section 8(b)(4)(ii)(B) of the Act. In support thereof, petitioner respectfully shows as follows

1. Petitioner is Regional Director, Region 2 of the Board, an agency of the United States, and files this petition for and on behalf of the Board.
2. Jurisdiction of this Court is invoked pursuant to Section 10(1) of the Act.
3. On May 13, 1975 and July 10, 1975, South American Fur and Skin Co., Inc., herein called South American, pursuant to provisions of the Act, filed respectively a charge and amended charge with the Board alleging that

respondents, labor organizations, have engaged in and are engaging in, unfair labor practices within the meaning of Section 8(b)(4)(ii)B of the Act. A copy of said charges are attached hereto as Exhibits 1 and 2 and made a part hereof.

4. The aforesaid charges were referred to petitioner as Regional Director, Region 2 of the Board.

5. Upon the basis of the following, petitioner has reasonable cause to believe that said charges are true and that a complaint of the Board based on said charges should issue against respondents pursuant to Section 10(b) of the Act. More particularly, petitioner has reasonable cause to believe, and believes, that respondents are labor organizations within the meaning of Sections 2(5), 8(b) and 10(1) of the Act, and that said respondents have engaged in, and are engaging in, acts and conduct in violation of Section 8(b)(4)(ii)(B) of the Act, affecting commerce within the meaning of Section 2(6) and (7) of the Act, as follows:

(a) Respondents, unincorporated associations are organizations in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(b) Respondent, Fur Dressers, Local 2F, Amalgamated Meat Cutters & Butchers Workmen of North America, AFL-CIO, herein called Local 2F, has its office and place of business at 149 West 28th Street, New York, New York, and at all times material herein has been engaged within this judicial district in transacting business and in promoting and protecting the interests of its employee members.

(c) Fur Floorworkers Union, Local 3, Amalgamated Meat Cutters & Butchers Workmen of North America, AFL-CIO, herein called Local 3, has its office and place of business at 149 West 28th Street, New York, New York, and at all times material herein has been engaged within this judicial district in

transacting business and in promoting and protecting the interest of its employee members.

(d) Respondent, Joint Board of Fur, Leather & Machine Workers, Amalgamated Meat Cutters & Butchers Workmen of North America, AFL-CIO, herein called the Joint Board, has its office and place of business at 109 West 26th Street, New York, New York, and at all times material herein has been engaged within this judicial district in transacting business and in promoting and protecting the interests of its employee members.

(e) South American is a New York corporation engaged in the business of selling at wholesale, imported furs and skins.

(f) South American commenced business operations on or about May 8, 1975 and since said date it has purchased goods, materials and services valued in excess of \$50,000 from firms located outside the State of New York.

(g) At all times material herein, South American has imported skins from a company called Southern Skin Trading Corp. which is located in Argentina.

(h) At all times material herein, South American has contracted certain work relating to the dressing of imported raw skins and the redressing of imported dressed skins to Mirode Company located at 838 River Road, Edgewater, New Jersey.

(i) At all times material herein, approximately 80% to 90% of the skins imported by South American have been dressed skins.

(j) On or about April 23, 1975, Henry Foner, manager of the Joint Board and an agent of respondents made a demand upon South American that it import only raw skins and that such skins be given for processing to companies which have collective bargaining agreements with respondent.

(k) On or about April 30, 1975, respondents by Jack Mason, a business agent of Local 2F and an agent of respondents, threatened South American

can that it would not be able to sell dressed skins in the market and that such skins would be burned or damaged.

(l) On or about May 5, 1975, respondents by Henry Foner, Paul Catani and Seymour Sobin their agents, threatened South American with picketing if it continued to import and sell dressed skins. Paul Catani is the manager of Local 3 and Seymour Sobin is the manager of Local 2.

(m) On or about May 8, 1975, respondents commenced picketing at the premises occupied by South American with signs reading:

Please Save Our Jobs

Don't Buy Argentine Dressed Fur Skins

Sold by South American Fur & Skins Company

Local 2F and 3F, Joint Board, AMC

This is an appeal to consumers and customers and
not to employees.

The aforesaid picketing at South American has continued to date.

(n) On or about May 9, 1975 and May 12, 1975, respondents at the premises at South American, physically blocked and impeded South American from shipping skins from its place of business and assaulted and threatened employees of Mirode and South American attempting to make such shipments.

(o) Respondents have no primary labor dispute with South American.

(p) By the acts and conduct set forth above in subparagraphs (k) through (n), respondents have threatened, restrained or coerced South American and other persons engaged in commerce or in an industry affecting commerce.

(q) An object of respondents acts and conduct set forth above in subparagraphs (k) through (n) has been to force or require South American to cease doing business with Southern Skin Trading Corp. and Mirode Company.

6. It may fairly be anticipated that, unless enjoined, respondents will continue to repeat the acts and conduct set forth in paragraph 5, subparagraphs

(k) through (o), or similar or like acts and conduct, in violation of Section 8(b)(4)(ii)(B) of the Act. It is therefore essential appropriate, just and proper, for the purpose of effectuating the policies of the Act, and in accordance with the provisions of Section 10(1) thereof, that, pending the final disposition of the matters involved herein pending before the Board, respondents be enjoined and restrained from the commission of the acts and conduct above alleged, similar acts and conduct, or repetitions thereof.

7. No previous application has been made for the order or relief herein sought.

WHEREFORE petitioner prays:

1. That the Court issue an order directing respondents to appear before this Court, at a time and place to be fixed by the Court, and show cause, if any there be, why an injunction should not issue enjoining and restraining respondents, their officers, agents, representatives, servants, employees, attorneys, and all members and persons acting in concert or participation with them, pending final disposition of the matters involved pending before the Board from:

In any manner or by any means, threatening, coercing or restraining South American, where in an object thereof is to force or require it to cease doing business with Southern Skin Trading Corp or Mirode.

2. That upon the return of the order to show cause, the Court issue an order enjoining and restraining respondents in the manner set forth above.

3. That the Court grant such further and other relief as may be just and proper.

Dated at New York, New York, this day of July 1975.

Sidney Danielson, Regional Director
Region 2
National Labor Relations Board

PETER G. NASH,
General Counsel,

JOHN S. IRVING,
Deputy General Counsel,

GERALD BRISSMAN,
Assistant General Counsel,

WINIFRED D. MORIO,
Regional Attorney,

RAYMOND P. GREEN,
Attorney,

NATIONAL LABOR RELATIONS BOARD
Federal Building, Room 3614
26 Federal Plaza
New York, New York 10007
Telephone: 264-0322

EXHIBIT 1

FORM NLRB-808 (11-63)		Form Approved Budget Bureau No. 64-208112	
UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS			
INSTRUCTIONS: File an original and 3 copies of this charge and an additional copy for each organization, each local and each individual named in item 1 with the NLRB regional director for the region in which the alleged unfair labor practices occurred or is occurring.		DO NOT WRITE IN THIS SPACE	
		Case No. 2-CC-1368	
		Date Filed May 13, 1975	
1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT			
a. Name	b. Union Representative to Contact	c. Phone No.	
Local 2 and 3, Amalgamated Meat Cutters	Henry Foner	WA-4-6600	
d. Address (Street, city, State and ZIP code) 250 West 20th Street, New York, N.Y.			
e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (1) (2) (3) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.			
2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)			
<p>Since on or about May 8, 1975, the above-named labor organization has induced or encouraged individuals employed by South America Fur & Skin Co., Inc. to engage in strikes or work stoppages, and has threaten, restrained and coerced South America Fur & Skin Co., Inc. and other persons engaged in commerce or an industry affecting in commerce, in either case an object thereof is to force or require South America Fur & Skin Co., Inc. to cease doing business with Marode Company, or other persons engaged in commerce or in an industry affecting commerce</p>			
3. Name of Employer South America Fur and Skin Co., Inc.			
4. Location of Plant Involved (Street, city, State and ZIP code) 204 West 30th Street, New York, N.Y. 10001			
5. Type of Establishment (Factory, mine, wholesaler, etc.) Importer	6. Identify Principal Product or Service Furs & Skins	7. No. of Workers Employed	
8. Full Name of Party Filing Charge South America Fur and Skin Co., Inc.			
9. Address of Party Filing Charge (Street, city, State and ZIP code) 204 West 30th Street, New York, N.Y. 10001			10. Telephone No. 594-3180
11. DECLARATION			
I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.			
By <u>[Signature]</u> (Signature of representative or person making charge)		President (Title or office, if any)	
Address: 204 West 30th Street, N.Y. N.Y. 10001		594-3180 (Telephone number)	
		May 13, 1975 (Date)	
WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)			

UNITED STATES OF AMERICA NATIONAL LABOR RELATIONS BOARD		Form 100-100 U.S. L. No. 100-100
CHARGE AGAINST LABOR ORGANIZATION OR ITS AGENTS		
1. Name of Labor Organization or its Agents: <u>South American Fur & Skin Co., Inc. and Marode Company</u> 2. Address (Street, city, State and ZIP code): <u>204 West 30th Street New York, New York 10001</u>		DO NOT WRITE IN THIS SPACE Date Filed: <u>7/10/75</u>
3. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.): <p>Since on or about May 8, 1975, the above named labor organizations by their officer and agents have induced or encouraged individuals employed by South American Fur & Skin Co., Inc. and Marode Company and other persons engaged in commerce or industry affecting commerce to engage in strikes work stoppages or refusal in the course of their employment to handle goods or perform services and have threatened, restrained or coerced South American Fur & Skin Co., Inc., Marode, or other persons engaged in commerce or in an industry affecting commerce where in either case an object thereof is to force or require said persons to cease doing business with each other and to force or require South American Fur & Skin Company Inc. to cease doing business with Southern Skin Trading Corporation.</p>		
4. Name of Employer: <u>SOUTH AMERICAN FUR & SKIN CO., INC.</u> 5. Location of Plant Involved (Street, city, State and ZIP code): <u>204 West 30th Street New York, New York 10001</u>		6. Phone No.: <u>594-3180</u> 7. Employer Representative to Contact: _____
8. Type of Establishment (Factory, mine, wholesale, etc.): <u>IMPORTER</u>	9. Identify Principal Product or Service: <u>FUR & SKINS</u>	10. No. of Workers Employed: _____
11. Full Name of Party Filing Charge: <u>SOUTH AMERICAN FUR AND SKINS CO., INC.</u> 12. Address of Party Filing Charge (Street, city, State and ZIP code): <u>204 West 30th Street, New York, New York 10001</u>		13. Telephone No.: <u>594 3180</u>
14. DECLARATION		
I declare and swear that the above charge and the statements therein are true to the best of my knowledge and belief.		
By: <u>[Signature]</u> (Signature of representative or person making charge) <u>/s/ Philip Sabrykent</u>		President (Title or office, if any)
Name as above: _____ (Telephone number)		<u>7/10/75</u> (Date)
SPECIALLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT U.S. CODE, TITLE 18, SECTION 863		

ATTACHMENT

1. Fur Dresses Union, Local 2F, Amalgamated Meat Cutters & Butchers
Workmen of North America, AFL-CIO
149 West 28th Street
New York, New York
Att: Seymour Sobin

2. Fur Floor Workers Union, Local No. 3, Amalgamated Meat Cutters &
Butchers Workmen of North America, AFL-CIO
149 West 28th Street
New York, New York
Att: Paul Catani

3. Joint Board of Fur Leather & Machine Workers, Amalgamated Meat
Cutters & Butchers Workmen of North America, AFL-CIO
109 West 26th Street
New York, New York
Att: Henry Foner

[illegible]

I, Sidney Danielson, being first duly sworn, depose and say that I am the Regional Director, Region 2, of the National Labor Relations Board; that I have read the foregoing petition and know the contents thereof; that the statements therein made as upon personal knowledge are true and those made as upon information and belief I believe to be true. Further, Section 10(i) of the National Labor Relations Act provides that "petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed." In order to meet the requirements of said subsection, petitioner, rather than moving by notice of motion, requests the issuance of the order to show cause herein returnable at the earliest date possible.

Further, inasmuch as a hearing will be required on the petition, and because of the nature of these proceedings issue has not yet been joined, petitioner requests that any memoranda furnished by the parties shall be filed after the joinder of issue by service of an answer, by twelve o'clock noon on the day before the time to be fixed for a hearing.

Sidney Danielson

Subscribed and sworn to before me
this day of 197

Mary W. Taylor
Notary Public, State of New York
No. 31-9296255
Qualified in New York County
Commission Expires March 30, 1976

APPENDIX I

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

In the Matter of

MEAT CUTTERS LOCALS 2 & 3
(Mirco Co.)
Case No. 22-17-155

SETTLEMENT AGREEMENT

The undersigned Charging Party and the undersigned Charging Party, in settlement of the above matter, and subject to the approval of the Regional Director for the National Labor Relations Board, HEREBY AGREE AS FOLLOWS:

POSTING OF NOTICE — Upon approval of this Agreement, the Charging Party will post immediately in conspicuous places in and about its plant/offices, including all places where notices to employees/members are customarily posted, a notice for a period of at least 60 consecutive days from the date of posting, copies of the Notice attached hereto to constitute a part thereof, said Notice to be signed by a responsible official of the Charging Party, and the date of actual posting to be shown thereon. In the event this Agreement is in settlement of a charge against a union, the union will submit 10 copies with signed copies of said Notice to the Regional Director who will forward them to the employer whose employees are involved herein, for posting, the employer willing in conspicuous places in and about the employer's plant where they shall be maintained for a period of at least 60 consecutive days from the date of posting.

COMPLIANCE WITH NOTICE — The Charging Party will comply with all the terms and provisions of said Notice.

~~Execution of this Settlement Agreement does not constitute an admission by the Respondents that they have engaged in any unfair labor practices within the meaning of the National Labor Relations Act, as amended.~~

Execution of this Settlement Agreement does not constitute an admission by the Respondents that they have engaged in any unfair labor practices within the meaning of the National Labor Relations Act, as amended.

REFUSAL TO ISSUE COMPLAINT — In the event the Charging party fails or refuses to become a party to this Agreement, then, if the Regional Director in his discretion believes it will effectuate the policies of the National Labor Relations Act, he shall decline to issue a Complaint herein (or a new Complaint if one has been withdrawn pursuant to the terms of this Agreement), and this Agreement shall be between the Charging Party and the undersigned Regional Director. A review of such action may be obtained pursuant to Section 102.9 of the Rules and Regulations of the Board if a request for same is filed within 10 days thereof. This Agreement is contingent upon the General Counsel sustaining the Regional Director's action in the event of a review. Approval of this Agreement by the Regional Director shall constitute withdrawal of any Complaint(s) and Notice of Hearing heretofore issued in this case.

PERFORMANCE — Performance by the Charging Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or, in the event the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charging Party of advice that no review has been requested or that the General Counsel has sustained the Regional Director.

NOTIFICATION OF COMPLIANCE — The undersigned parties to this Agreement will each notify the Regional Director in writing what steps the Charging Party has taken to comply herewith. Such notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. In the event the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that no review has been requested or that the General Counsel has sustained the Regional Director. Contingent upon compliance with the terms and provisions hereof, no further action shall be taken in the above case.

FUR IRESSERS UNION, LOCAL NO. 2F
AMALGAMATED MEAT CUTTERS & BUTCHERS
WORKMEN OF NORTH AMERICA, AFL-CIO
and
FUR FLOOR WORKERS UNION, LOCAL NO. 3,
AMALGAMATED MEAT CUTTERS & BUTCHERS
WORKMEN OF NORTH AMERICA, AFL-CIO

MIRCO COMPANY
(Charging Party)

By: /s/ James Le Beau, Esq.
(Name and Title)

By: /s/ Brian O'Dwyer
(Name and Title)

Date: JAMES LE BEAU, ESQ.
May 20, 1975

Date: BRIAN O'DWYER
May 16, 1975

Recommended: 22 MAY 1975
(Date)

Approved: 22 MAY 1975
(Date)

By: /s/ Michael Young
Michael Young,
Board Agent

By: /s/ Ronald T. Smith
Acting Regional Director
National Labor Relations Board

220450-108

Appendix 3

FORM NLRB-4723
(12-70)

NOTICE TO MEMBERS



POSTED PURSUANT TO A SETTLEMENT AGREEMENT APPROVED BY A REGIONAL DIRECTOR OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

WE WILL NOT picket, or cause to be picketed, or threaten to picket, MIRODE COMPANY where an object thereof is to force or require MIRODE COMPANY to recognize or bargain with FUR DRESSES UNION, LOCAL NO. 2F, AMALGAMATED MEAT CUTTERS & BUTCHERS WORKMEN OF NORTH AMERICA, AFL-CIO and FUR FLOOR WORKERS UNION, LOCAL NO. 3, AMALGAMATED MEAT CUTTERS & BUTCHERS WORKMEN OF NORTH AMERICA, AFL-CIO as representatives of its employees while the MIRODE COMPANY is lawfully recognizing in accordance with the Act, LOCAL 1518, affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA and a question concerning representation of the employees of MIRODE COMPANY may not appropriately be raised under Section 9(c) of the Act.

FUR DRESSES UNION, LOCAL NO. 2F AMALGAMATED
MEAT CUTTERS & BUTCHERS WORKMEN OF NORTH
AMERICA, AFL-CIO AND FUR FLOOR WORKERS UNION,
LOCAL NO. 3 AMALGAMATED MEAT CUTTERS & BUTCHERS
WORKMEN OF NORTH AMERICA, AFL-CIO
(Representatives)

DATED _____ BY _____
(Representative) (Title)
(Local No. 2F)

DATED _____ BY _____
(Representative) (Title)
(Local No. 3)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office. Room 1600, Federal Building, 970 Broad Street, Newark, New Jersey 07102 (Telephone: (201) 645-2100)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
SIDNEY DANIELSON, Regional Director,
Region 2, of the National Labor Relations
Board, for and on behalf of the NATIONAL
LABOR RELATIONS BOARD,

Petitioner,

75 Civil 3438 (KTD)

v.

FUR DRESSERS, LOCAL NO. 2F, AMALGAMATED
MEAT CUTTERS AND BUTCHER WORKMEN OF
NORTH AMERICA, AFL-CIO; FUR FLOOR WORKERS
UNION LOCAL NO. 3, AMALGAMATED MEAT
CUTTERS AND BUTCHER WORKMEN OF NORTH
AMERICA, AFL-CIO; and JOINT BOARD OF FUR,
LEATHER AND MACHINE WORKERS, AMALGAM-
ATED MEAT CUTTERS AND BUTCHER WORKMEN
OF NORTH AMERICA, AFL-CIO,

Respondents.

----- x
ANSWER OF RESPONDENTS LOCALS 2F and 3F

Respondents FUR DRESSERS UNION LOCAL 2F and FUR FLOOR
WORKERS UNION LOCAL 3F, AMALGAMATED MEAT CUTTERS AND
BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO ("Locals 2F and
3F"), for their answer to the petition:

1. Deny the allegations of paragraph 5 except that it;
 - (1) Admit the allegations of subparagraphs (a), (b), (c), (d), (g),
(l), and (m);
 - (2) Deny knowledge or information with respect to the allegations
of subparagraphs (e), (f), (h), (i) and (j).
2. Deny the allegations of paragraph 6 except admit that they intend to
continue peacefully to picket South American with the sign described in sub-
paragraph 5(m).

AS A FIRST AFFIRMATIVE DEFENSE:

3. Local 2F's and 3F's dispute with South American is primary, and not secondary:

(a) Locals 2F and 3F have no dispute with the Argentine firms which dress and dye the skins which South American offers for sale; they do not seek to deal with such firms, to represent their employees, or to change their labor standards in any way.

(b) Locals 2F and 3F have no dispute with anyone to whom South American sells or with whom it otherwise deals and their picketing is not intended to compel any third or other party to yield to a Joint Board objective.

(c) Locals 2F and 3F have not attempted to cause, and has not caused, any employee of South American or of anyone else to refuse to deliver to, pick up from, or otherwise to work upon or handle any product of South American.

(d) The sole objective of the Locals' picketing is, by peaceful expression, to persuade prospective buyers not to buy a product which the Locals consider to be harmful to the welfare of their members because its purchase destroys their jobs.

4. In recent years the American fur industry has suffered a severe attrition, in part because of the increased volume of imports of foreign-dressed skins and foreign-made garments. This has resulted in the closing of hundreds of shops and the loss of thousands of jobs for American fur workers.

5. In an effort to reverse this trend, various surviving segments of the industry have joined in a common effort to promote American processing of skins and American manufacture of fur garments. This program has stressed, among other things, the superiority of American workmanship, quality, and design, and the greater availability and reliability of domestic plant and labor.

6. The picketing complained of is in furtherance of this buy-American campaign to preserve the domestic industry and to save the jobs of its

unemployed workers. The picketing is unrelated to labor conditions in Argentina.

7. For many years Argentina has been the principal exporter of South American fur skins to the United States.

8. The American fur industry is essentially centered and most manufacturers are located within a few blocks in the West 20s and 30s in Manhattan. Historically these skins were therefore shipped raw for dressing and dyeing in New York and this work comprised an important part of the domestic fur industry and the source of jobs for many members of respondent unions.

9. Recently, the Argentine government embargoed the export of such skins unless 90% of the dressing and dyeing on them was performed in that country. This embargo resulted in a sharp curtailment of operations in New York shops which had long processed these skins and the displacement of a substantial number of workers, many of whom have since remained unemployed.

10. In early 1975 South American was established as the American distributor of these skins, now dressed and dyed in Argentina, and it opened a store for that purpose at 204 West 30th Street, Manhattan, in the heart of the fur market.

11. Domestic fur manufacturers are the principal, of not the sole, buyers of these skins. Manufacturers support and contribute to the promotional effort and many would not knowingly undercut that effort by buying skins which they knew to have been processed abroad.

12. Because the fur industry is highly unionized, prospective purchasers of South American's skins would assume that they were union-made and hence domestically dressed and dyed.

13. South American's skins are not marked to indicate that they were dressed and dyed abroad. Upon information and belief, South American attempts to deceive prospective buyers as to the foreign processing of its skins

by a "laundering" arrangement with Mirode whereby Mirode receives, unbales, and fluffs the skins so as to have a pretextual basis for affixing a (Teamsters) union label to them or otherwise to represent that they have been processed by domestic labor.

14. Locals 2F's and 3F's grievance is only against South American because South American is merchandising a product in the heart of the fur market which is injurious to the economic welfare of members of the said Locals and to the survival of the domestic fur industry and because they wish to alert like-minded members of the industry to the fact that South American's skins have been foreign dressed and dyed and to the common dangers which the Locals perceive in the continued sale of such skins in the fur market.

15. Locals 2F's and 3F's picketing has been truthful and it has been peaceful. It has been directed only at the primary party, South American, with whom the Joint Board is in controversy, and it has not been carried to anyone with whom South American deals. Accordingly, it has not had any secondary effects or aspects with which Section 8(b)(4) is concerned.

16. In the absence of any of the secondary aspects proscribed by Section 8(b)(4), Locals 2F and 3F have an absolute First Amendment and statutory right to publicize, by peaceful picketing, the truthful fact that the skins offered for sale by South American have been processed in Argentina, and to appeal to buyers not to buy.

AS A SECOND AFFIRMATIVE DEFENSE:

17. Locals 2F's and 3F's picketing complained of is intended solely to preserve for its members the dressing and dyeing work on raw skins from Argentina which they have traditionally done, and it is not intended to compel employers in Argentina to establish labor or other conditions to comply with Joint Board standards.

18. Such picketing to preserve the work for its members is lawful because it is primary, within the holding of *Woodwork Manufacturers Association v.*

NLRB, 386 US 612; 18 L ed 2d 357 (1967), and is not within the proscriptions against secondary activity of §8(b)(4)(B) or of §8(e) of the Act.

WHEREFORE, the petition should be dismissed.

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& FRIEDMAN, P.

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New York, N.Y. 10016

* * * * *

ANSWER OF RESPONDENT FLM JOINT BOARD

Respondent Joint Board of Fur, Leather and Machine Workers, Amalgamated Meat Cutters and Butcher Workmen of North America, FL-CIO (the "Joint Board"), for its answer to the petition:

1. Denies the allegations of paragraph 5 except that it:
 - (1) Admits the allegations of subparagraphs (a), (b), (c), (d), (g), (i), (l), and (m);
 - (2) Denies knowledge or information with respect to the allegations of subparagraphs (e), (f), (h), and (k).
2. Denies the allegations of paragraph 6 except admits that it intends to continue peacefully to picket South American with the sign described in subparagraph 5(m).

As A First Affirmative Defense:

3. The Joint Board dispute with South American is primary, and not secondary:

(a) The Joint Board has no dispute with the Argentine firms which dress and dye the skins which South American offers for sale; it does not seek to deal with such firms, to represent their employees, or to change their labor standards in any way.

(b) The Joint Board has no dispute with anyone to whom South American sells or with whom it otherwise deals and its picketing is not intended to compel any third or other party to yield to a Joint Board objective.

(c) The Joint Board has not attempted to cause, and it has not caused, any employee of South American or of anyone else to refuse to deliver to, pick up from, or otherwise to work upon or handle any product of South American.

(d) The sole objective of the Joint Board picketing is, by peaceful expression, to persuade prospective buyers not to buy a product which the Joint Board considers to be harmful to the welfare of its members because its purchase destroys their jobs.

4. In recent years the American fur industry has suffered a severe attrition, in part because of the increased volume of imports of foreign-dressed skins and foreign-made garments. This has resulted in the closing of hundreds of shops and the loss of thousands of jobs for American fur workers.

5. In an effort to reverse this trend, various surviving segments of the industry have joined in a common effort to promote American processing of skins and American manufacture of fur garments. This program has stressed, among other things, the superiority of American workmanship, quality, and design, and the greater availability and reliability of domestic plant and labor.

6. The picketing complained of is in furtherance of this buy-American campaign to preserve the domestic industry and to save the jobs of its unemployed workers. The picketing is unrelated to labor conditions in Argentina.

7. For many years Argentina has been the principal exporter of South American fur skins to the United States.

8. The American fur industry is essentially centered and most manufacturers are located within a few blocks in the West 20s and 30s in Manhattan. Historically these skins were therefore shipped raw for dressing and dyeing in New York and this work comprised an important part of the domestic fur industry and the source of jobs for many members of respondent unions.

9. Recently, the Argentine government embargoed the export of such skins unless 90% of the dressing and dyeing on them was performed in that country. This embargo resulted in a sharp curtailment of operations in New York shops which had long processed these skins and the displacement of a substantial number of workers, many of whom have since remained unemployed.

10. In early 1975 South American was established as the American distributor of these skins, now dressed and dyed in Argentina, and it opened a store for that purpose at 204 West 30th Street, Manhattan, in the heart of the fur market.

11. Domestic fur manufacturers are the principal, if not the sole, buyers of these skins. Manufacturers support and contribute to the promotional effort and many would not knowingly undercut that effort by buying skins which they knew to have been processed abroad.

12. Because the fur industry is highly unionized, prospective purchasers of South American's skins would assume that they were union-made and hence domestically dressed and dyed.

13. South American's skins are not marked to indicate that they were dressed and dyed abroad. Upon information and belief, South American

attempts to deceive prospective buyers as to the foreign processing of its skins by a "laundering" arrangement with Mirode whereby Mirode receives, unbales, and fluffs the skins so as to have a pretextual basis for affixing a (Teamsters) union label to them or otherwise to represent that they have been processed by domestic labor.

14. The Joint Board's grievance is only against South American because South American is merchandising a product in the heart of the fur market which is injurious to the economic welfare of members of the Joint Board and to the survival of the domestic fur industry and because it wishes to alert like-minded members of the industry to the fact that South American's skins have been foreign dressed and dyed and to the common dangers which the Joint Board perceives in the continued sale of such skins in the fur market.

15. The Joint Board's picketing has been truthful and it has been peaceful. It has been directed only at the primary party, South American, with whom the Joint Board is in controversy, and it has not been carried to anyone with whom South American deals. Accordingly, it has not had any secondary effects or aspects with which Section 8(b)(4) is concerned.

16. In the absence of any of the secondary aspects proscribed by Section 8(b)(4), the Joint Board has an absolute First Amendment and statutory right to publicize, by peaceful picketing, the truthful fact that the skins offered for sale by South American have been processed in Argentina, and to appeal to buyers not to buy.

As A Second Affirmative Defense:

17. The Joint Board's picketing complained of is intended solely to preserve for its members the dressing and dyeing work on raw skins from Argentina which they have traditionally done, and it is not intended to compel employers in Argentina to establish labor or other conditions to comply with Joint Board standards.

18. Such picketing to preserve the work for its members is lawful because it is primary, within the holding of *Woodwork Manufacturers Association v. NLRB*, 386 US 612; 18 L ed 2d 357 (1967), and is not within the proscriptions against secondary activity of §8(b)(4)(B) or of §8(e) of the Act.

Wherefore, the petition should be dismissed.

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[August 19, 1975]

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AFFIDAVIT AND TENDER

STATE OF NEW YORK)

COUNTY OF NEW YORK) ss.:

ROBERT MARKEWICH, being duly sworn, deposes and says:

1. I am a member of the firm of MARKEWICH ROSENHAUS MARKEWICH & FRIEDMAN, P.C., attorneys for two of the Respondents, FUR DRESSERS UNION LOCAL No. 2F and FUR FLOOR WORKERS UNION LOCAL No. 3F, both affiliated with AMALGAMATED MEAT CUTTER AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO ("Locals 2F and 3F").

2. With the full authorization of my clients, I make this affidavit for the purpose of clarifying and narrowing the issues now before this Court, and also the tender contained in ¶ 7 hereinbelow.

3. As appears from the petition for the temporary injunction, Petitioner, the Regional Director of Region 2 of the National Labor Relations Board, is not content to rest upon the only real and substantial issue presented by Respondents' picketing, to wit, whether Respondents' peaceful consumer picketing of South American Fur & Skins, Inc., the Charging Party, is enjoinable by this Court under Sections 8(b)(4)(ii)(B) and 10(1) of the Taft-Hartley Act, as amended. Petitioner must be fearful that presentation of this issue in its stark, unadulterated form will result neither in a temporary injunction nor a final cease and desist order, because the picketing (1) is primary, not secondary, (2) is protected by the First Amendment of the Constitution, (3) is protected by the Supreme Court's decision in the *Tree Fruits* case, and (4) is not in any event in commerce. Understandably lacking faith in his main contention, the Petitioner has introduced into the case a single extraneous incident of violence, which

took place two months before the Board bestirred itself to seek an injunction. It is conceded that there has been not even a mild repetition of this incident in the three months that have ensued. By this muddying of the waters, the Petitioner hopes to obtain a temporary injunction notwithstanding his inability to persuade the Court that Respondents' peaceful consumer picketing should, on its own terms, be enjoined.

4. On May 12, 1975 there was indeed a flurry of physical violence in front of the premises of the Charging Party. Investigation of the facts discloses the following: Mirode Company, a fur dresser located in Edgewater, New Jersey, which Locals 2F and 3F were trying to organize, sent a truck to pick up or deliver furs to the Charging Party. One Milton Mainwald, the proprietor of Mirode, and two husky helpers named Wally (last name unknown) and Stuart Marcus came out of the truck and physically attacked Jack Mazin, a Local 2F picket. One of the attackers used a blunt instrument on Mazin, so that he required medical treatment. John Stokes and Paul Cattani of Locals 2F and 3F went to the aid of Mazin; at this point the two helpers turned to attack Stokes. One-half hour later Mainwald himself, passing Cattani on Seventh Avenue, swung on Cattani in a rage. Naturally, Cattani defended himself. The only person who suffered injury was the aforesaid picket, Mazin.

5. In any event, cross-complaints were filed in the Criminal Court of the City of New York. *All the charges were dismissed.* Then, about a week after the incident of May 12, 1975, Locals 2F and 3F entered into a settlement agreement with the Board and Mirode in New Jersey, acknowledging that Mirode was under contract with Local 1518, International Brotherhood of Teamsters; consequently Locals 2F and 3F had no choice but to withdraw their pickets from Mirode.

6. Notwithstanding the dismissal of the criminal charges resulting from this single incident of violence, notwithstanding the fact that the

violence was not instigated by Locals 2F and 3F, and notwithstanding the settlement between Locals 2F and 3F and Mirode, the Petitioner persists in drawing this red herring across the sharp and substantial legal and constitutional issues raised by Respondents' consumer picketing. (Incidentally, Respondent FLM Joint Board was in no way involved in either the incident of May 12, 1975 or in the representation hassle with Mirode in New Jersey).

7. Respondents Locals 2F and 3F of course deny any culpability whatsoever with respect to the single incident of violence on May 12, 1975. However, in an effort to narrow the issues before this Court on the petition for a temporary injunction, Locals 2F and 3F state their willingness to accept an injunction — and indeed a final cease and desist order — against any violent conduct by them in the future. It is hoped that by entering into this partial "consent decree" the specious issue of violence — which never should have been introduced in the first place — is removed from the case for all purposes. The Court is thus in position to address itself exclusively to the only genuine issue presented by the pleadings, to wit, whether the consumer picketing by all three respondent unions is, or is not, enjoined under existing statutory and decisional law.

/s/ Robert Markewich
ROBERT MARKEWICH

Sworn to before me this
19th day of August, 1975
/s/ Margarita Padilla
Margarita Padilla
Notary Public
No. 24-4519924
Qualified in Kings County
Term Expires March 30, 1976

[August 12, 1975]

* * * * *

RESPONDENT'S JOINT MEMORANDUM FOR
DISMISSAL OF PETITION FOR §10(1) INJUNCTION

Preliminary Statement

Respondent local unions ("Joint Board" and "Locals 2 and 3") contend that §10(1) does not authorize an injunction in this case and, alternatively, that an injunction is improper for the following reasons:

1. The picketing here is primary: it is directed only towards South American for the purpose of preserving jobs for the members of respondent unions who have traditionally performed the work in question. It is therefore primary work preservation picketing within *National Woodwork Manufacturers Association v. NLRB*, 386 US 612, 18 L ed 2d 357 (1967). The picketing is not directed against Southern Skins: the unions have no dispute with that Argentine company and do not seek to affect its dealings with its employees in any way whatever.

Unlike the cases upon which petitioner relies, the actions of the unions are aimed only at South American; the unions have no dispute with anyone from whom South American buys or to whom it sells, and they have not tried to cause, or caused, employees of anyone else, not even employees of South American, to refuse to handle South American's products.

Therefore, this is in no sense a secondary case which concerns §8(b)(4); it is a pure free speech case within the First Amendment and the free speech proviso of the Act.

2. Alternatively, if the picketing is secondary, it has had no secondary effects which are prohibited by §8(b)(4). Picketing to publicize that the skins offered for sale by South American have been dressed and dyed abroad, even if secondary, is protected consumer picketing within *Tree Fruits*, 377 US 58

(1964) if it does not result in stoppages of deliveries or refusals to handle by employees at the picketed establishment. There is no claim that there have been such stoppages or refusals here.

3. Picketing against the displacement of American workers by the sale within the fur market of foreign-dressed skins is not a matter for the Board but is solely a matter for the state courts where, as here, the picketing is unaccompanied by any Federally proscribed secondary strikes, secondary boycotts, or secondary picketing. *American Radio Association v. Mobile Steamship Association*, 415 US 947, 87 LRRM 3145 (Dec. 17, 1974). In New York such picketing is lawful. *Goldfinger v. Feintoch*, 276 NY 281.

4. Injunctive relief is inappropriate in this case in any event.

The Facts

Respondents expect to establish the following facts:

1. Respondents are separate autonomous local unions whose members dress and dye raw fur skins for use in the manufacture of fur garments. These skins are purchased almost exclusively by fur manufacturers, virtually all of whom in the United States are located within a few blocks of the West Twenties and Thirties in Manhattan.

2. Argentina is the principal source for South American skins used by the fur industry in the United States. For many years these skins had been shipped raw for dressing and dyeing in New York and this work had been an important source of jobs for members of the unions.

3. Recently the Argentine government embargoed the export of these skins unless 90% of the dressing and dyeing work on them was performed in Argentina. This resulted in a sharp curtailment of work in those shops which had long processed these skins and the displacement of many workers, most of whom remain unemployed.

4. In early 1975, South American was established as the American distributor for these Argentine dressed and dyed skins and it opened a store for this purpose at 204 West 30th Street, in the heart of the fur market.

5. In recent years the domestic fur industry has suffered a severe attrition, resulting in the closing of hundreds of shops and the loss of thousands of jobs. An increased volume of imports of foreign-dressed skins and foreign-made garments has been an important cause of this contraction.

6. In an effort to reverse this trend, the surviving segments of the industry, including the unions, have joined in costly campaigns to promote American processing of skins and American manufacture of garments. These "buy American" campaigns have stressed the superiority of American workmanship, quality, and design, and the greater availability and reliability of domestic plant and labor.

7. This effort has received especially strong financial and other support from manufacturers, many of whom would not knowingly undercut that program if they knew that skins which they were buying had been processed abroad.

8. Manufacturers are the principal, if not the sole, buyers of dressed and dyed fur skins.

9. Because the industry is unionized, manufacturers would tend to assume that a firm operating in the heart of the market, as South American does, is also unionized and that its skins are domestically processed.

10. South American's skins are not marked or labeled to indicate that they were processed in Argentina. On the contrary, there is reason to believe that South American has entered into an arrangement with Mirode for the latter to handle the skins in an inconsequential or token way as a pretext for claiming that they were processed domestically and/or by American union labor.

11. Mirode formerly had a contract with Locals 2 and 3. It "ran away" to Edgewater, New Jersey, where it entered into a contract with the Teamsters Union. There is reason to believe that South American, or its Argentine supplier, pays Mirode to receive the Argentine-processed skins, to "fluff" them, and then to affix a union label to the skins and ship them to South American's customers without the actual performance of any, or only token, dressing or dyeing work on the skins by Mirode's employees.¹

12. Shortly after South American opened, Henry Foner, the Joint Board president, visited its head and told him that the union considered that South American's distribution of Argentine-processed skins in the heart of the market was inimical to the welfare of the unemployed workers in the industry and misleading to the manufacturers and that the union intended to publicize the foreign origin of South American's skins by picketing it.

13. South American offered to sign a contract with the Joint Board if the Joint Board would not subject South American to such picketing. Foner declined to make such an arrangement and the picketing followed.

14. Despite petitioner's pejorative references to these conversations with Foner, they were civil, even amiable, and they were not characterized by any rough language or threats, except for the "threat" to picket.

¹ The petition refers to a recognitional picketing charge against Locals 2 and 3, which was filed by Mirode in the Board's Newark Regional Office. That charge was promptly settled on May 15 (Pet., App. I) and there is no claim that that settlement has been violated or that an injunction is necessary to prevent its violation. Furthermore, the Joint Board was in no way involved in that dispute. Therefore, the settled dispute with Mirode does not afford a reason for an injunction in this case.

Argument

- I. THIS CASE INVOLVES ONLY A DISPUTE WITH SOUTH AMERICAN, NOT A "PRIMARY" DISPUTE WITH ITS SUPPLIER TO WHICH SOUTH AMERICAN IS MERELY A NEUTRAL OR SECONDARY PARTY. THIS IS THEREFORE NOT A §10(1) CASE AT ALL, AND THE RIGHT OF THE UNIONS PEACEFULLY AND TRUTHFULLY TO PUBLICIZE THE FOREIGN ORIGIN OF SOUTH AMERICAN'S PRODUCTS IS PROTECTED BY THE FIRST AMENDMENT AND BY THE FREE SPEECH PROVISIO OF THE ACT.

A. This Is Not a §10(1) Case:

Section 10(1) affords the only basis for jurisdiction in this case (Pet. 2). So far as now material, that jurisdiction is triggered only by charges of secondary strikes, secondary boycotts, or secondary picketing proscribed by §8(b)(4), and by no other unfair labor practice charges. This is because the authorization for injunctive relief even before issuance of a Board complaint and upon a showing only of "reasonable cause" to believe that the neutral party is being subjected to §8(b)(4) proscribed activities is so extraordinary. See *Danielson v. Joint Council, ILGWU*, 287 F.Supp. 57; 58 LC ¶13,784 (SDNY, 1964); *Dooley v. Highway Drivers Union, Local 107*, 39 LC ¶66,288 (DC Cal., 1960).

Section 8(b)(4) is explicit, however, that these activities are lawful if they are directed against the primary party whom the union is attempting to reach.²

In order to invoke §8(b)(4) it is therefore necessary for the Board to invent a primary disputant in order to identify South American as a neutral or secondary. Without directly alleging a dispute between the unions and Southern Skins, the Argentine supplier of South American, the petition suggests that that is the case by alleging that the object of the picketing is to force South American to stop buying skins from Southern Skins.

² "Provided (sic), That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing."

The unions have no quarrel with Southern Skins, and they would not care if South American bought skins from Southern Skins for sale and distribution elsewhere; their grievance is the sale of these skins by South American in the New York fur market. It is South American's conduct in selling the skins here, not Southern Skins' actions in processing them, which is the sole cause of the grievance. Certainly, the unions have no concern with the labor practices or labor relations of Southern Skins and no desire to influence or affect them.

This case is thus squarely within *National Woodwork Manufacturers Association v. NLRB*, 386 US 612, 18 L ed 2d 357 (1967), where the Court held that the refusal of carpenters, under instructions of their union, to handle or install factory-processed doors for their employer was lawful primary activity because it was directed towards preserving for themselves the work they had traditionally done and "was not tactically calculated to satisfy union objectives elsewhere", i.e., with the door manufacturer (at p. 644). The Court said:

"The central theme pervading these provisions of protection for the neutral employer confirms the assurances of those sponsoring the section that in subsection (A) Congress likewise meant to protect the employer only from union pressures designed to involve him in disputes not his own."

(At pp. 625-626)

"... Although the language of §8(a) is sweeping, it closely tracks that of §8(b)(4)(A), and just as the latter and its successor §8(b)(4)(B) did not reach employees' activity to pressure their employer to preserve for themselves work traditionally done by them, §8(e) does not prohibit agreements made and maintained for that purpose."

(At p. 635)

"Before we may say that Congress meant to strike from workers' hands the economic weapons traditionally used against their employers' efforts to abolish their jobs, that meaning should plainly appear. '[I]n this era of automation and on-rushing technological change, no problems in the domestic economy are of greater concern than those involving job security and employment stability. Because of the potentially cruel impact upon the lives and fortunes of the working men and women of the Nation, these problems have understandably engaged the solicitous attention of government, of responsible private business, and particularly of organized labor.' *Fibreboard Paper Prods. Corp. v. Labor Board*, 379 US 203, 225, 13 L ed 2d 233, 247, 85 S Ct 398, 6 ALR3d 1130 (concurring opinion of Stewart, J.)."

(At p. 640)

"The determination whether the 'will not handle' sentence of Rule 17 and its enforcement violated §8(a) and §8(b)(4)(B) cannot be made without an inquiry into whether, under all the surrounding circumstances, the Union's objective was preservation of work for Frouge's employees, or whether the agreements and boycott were tactically calculated to satisfy union objectives elsewhere. Were the latter the case, Frouge, the boycotting employer, would be a neutral bystander, and the agreement or boycott would, within the intent of Congress, become secondary. There need not be an actual dispute with the boycotted employer, here the door manufacturer, for the activity to fall within this category, so long as the tactical object of the agreement and its maintenance is that employer, or benefits to other than the boycotting employees or other employees of the primary

employer thus making the agreement or boycott secondary in its aim. The touchstone is whether the agreement or its maintenance is addressed to the labor relations of the contracting employer vis-a-vis his own employees. This will not always be a simple task to apply. But '[h]owever difficult the drawing of lines more nice than obvious, the statute compels the task.' *Local 761, Electrical Workers v. Labor Board*, 366 US 667, 674, 6 L ed 2d 592, 598, 81 S Ct 1285."

(At pp. 644-645)

See also *Kaynard v. Teamsters, Local 282*, 56 LC, ¶12,256 (EDNY, 1967), where the Court denied an injunction against the union's refusal to permit the use or rental of labor-saving machinery until all its members were employed, the Court distinguishing between a strike to preserve work and a strike intended to injure a subcontractor.

This case does not go as far as either of those cited above: it does not involve stoppages or refusals to handle, nor is it one in which the unions are attempting to subject an "unoffending" employer to pressure in a controversy "not [i]ts own." *NLRB v. Denver Building and Construction Trades Council*, 341 US 675, 692.

The unions' dispute is only with South American because South American has invaded the fur market with a product which destroys the jobs of their members. They have no dispute with anyone else: there is no other "primary" strike, boycott, picketing, or controversy between them and anyone with whom South American deals. South American is not being picketed as a means to compel someone else to agree to something which the unions want.

Their protest is against the sale of imports here because imports destroy job opportunities here. Such picketing is not different than picketing and

strikes against the introduction of job-destroying machinery and technology which no one has thought to consider illegal under this Act.

This case is even stronger, for the present picketing is concerned purely with the dissemination of truthful information about the source of South American's goods and has not been accompanied by any strikes or stoppages. No workers have been sought or caused to refuse to handle South American's skins, or to refuse to deliver to it or to pick up from it. Thus, none of the secondary evils which §10(1) is intended to prevent are here present in any form whatever.

Therefore, this is not, in any sense, a §10(1) case.

B. This Is A Pure Free Speech Case:

The picketing does not relate to wages, hours, or conditions of employment even of South American's employees or the employees of its suppliers. It concerns purely an effort of respondents effectively to appeal to American consumers to buy American products in order to preserve the jobs of American workers, and not — whether intentionally or unknowingly — to buy foreign-dressed skins which are destructive of those jobs.

It is beyond question that the First Amendment would protect such peaceful and truthful picketing if it were carried on by a non-labor organization to protest practices or products deemed injurious or harmful for whatever reasons (e.g., picketing by parents' and civic groups against stores selling substances deemed harmful, or by groups protesting the showing of movies or shows deemed injurious or offensive), and that the First Amendment would also bar inquiry by government into the justice or wisdom of such picketing. *Organization for a Better Austin v. Keefe*, 402 US 415 (1970).

No reason suggests itself as to how or why labor organizations could have a lesser Constitutional protection to picket truthfully and peacefully to protest the sale of injurious products where, as here, the picketing is pure expression

which has none of the secondary characteristics or collateral effects which, in some circumstances, justify different Constitutional treatment of picketing: e.g., physical interference, resultant work stoppages, etc. This is not a case of "picketing that involved more than publicity." *Teamsters Local 695 v. Vogt, Inc.*, 354 US 284 (1957) (per Frankfurter, J.). Cf. *Giboney v. Empire Storage & Ice Co.*, 336 US 490, 499-500, 93 L ed 834, 841-842; *Schneider v. State*, 308 US 147, 160-161, 84 L ed 155, 164, and Mr. Justice Black's concurrence in *Tree Fruits*, *infra*, at pp. 76-80. See also Note, Consumer Picketing to Protest Products, Prices, or Services, 62 ALR 3d 227.

The picketing is also protected by the free speech proviso of the Act itself (Section 8(c)), which reads as follows:

"(c) The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such expression contains no threat of reprisal or force or promise of benefit."

The First Amendment is doubly applicable to this case: there are here involved not only the right of the unions to solicit support but, equally important, the right of concerned manufacturers to be alerted to the fact that the skins which South American offers for sale have been processed abroad.

In the absence of such picketing, the fact that South American operates on West 30th Street in a highly unionized industry could very well mislead prospective buyers into believing that South American's skins have been processed by American workers. Such deception would be enhanced if South American's arrangement with Mirode results in an American union label being stamped on the skins.

- II. EVEN IF SECONDARY, THE PICKETING IS "PERMISSIBLE SECONDARY CONSUMER PICKETING" (*Tree Fruits*) SINCE IT IS NOT INTENDED TO RESULT AND HAS NOT RESULTED IN ANY OF THE "ISOLATED EVILS" (WORK STOPPAGES OR REFUSALS TO HANDLE) WHICH §8(b)(4) IS INTENDED TO PREVENT.

Section 8(b)(4) contains the following publicity proviso exception to the secondary proscriptions of the Act:

"Provided further, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution."

By its terms, this proviso appears to apply only to publicity "other than picketing." Nevertheless, in *NLRB v. Fruits and Vegetables and Warehousemen's Local 760* ("*Tree Fruits*"), 377 US 58 (1964), the Supreme Court effectively invalidated this exception in consumer picketing situations. It concluded, from the legislative history of the proviso and the Constitutional doubt which would be generated by any other construction, that picketing of a secondary store which was "confined . . . to persuading customers to cease buying the product of the primary employer, was within the area of permissible secondary consumer picketing."

Tree Fruits grew out of a strike against apple growers in Yakima, Washington. In furtherance of its strike the union picketed supermarkets in the

Seattle area, urging consumers not to buy the struck apples. The picketing was not intended to and it did not result in any refusals by employees of the supermarkets to handle the struck apples.

Despite the "other than picketing" exception in the proviso, the Court held that the picketing was lawful even though it might "persuade the customers of the secondary employer to stop all trading with him."

Analyzing the text of the proviso, the Court found that Congress was concerned only with publicity against the neutral employer "which has the effect of cutting off his deliveries or inducing his employees to cease work." It described these effects as the "isolated evils" which the statute sought to reach, saying (at p. 70):

"It does not follow from the fact that some coercive conduct was protected by the proviso, that the exception 'other than picketing' indicates that Congress has determined that all consumer picketing was coercive To read into the Conference Agreement, on the basis of a single statement, an intention to prohibit all consumer picketing at a secondary site would depart from our practice of respecting the congressional policy not to prohibit peaceful picketing except to curb 'isolated evils' spelled out by the Congress itself." (*Id.*)

We have already shown that this case, unlike *Tree Fruits*, is not a secondary case but a primary one. In *Tree Fruits* the strike was against the growers and the picketing was of neutrals who did not have the power to settle the dispute between the unions and the growers, the primary employers.

But in this case, unlike *Tree Fruits*, the unions have no quarrel with the supplier or with its labor relations in Argentina. Furthermore, also unlike *Tree Fruits*, the unions are not carrying their quarrel with South American to those who buy from it since they are not picketing anyone who deals with South American.

Thus, their picketing is not "secondary" in any sense. But even if it were, it is plainly within *Tree Fruits* since here, as in *Tree Fruits*, there have not occurred any of the "isolated evils" which are excluded from the proviso: the halting of deliveries or the inducement of employees to cease work.

Petitioner's only basis for avoiding *Tree Fruits* is the Board's recent 3-2 decision in *Steelworkers Local 14055 (Dow Chemical Co.)*, 211 NLRB No. 59, 1974, CCH NLRB ¶ 26,217, where the Board, more than ten years later, announced that it would not apply the Supreme Court's holding in *Tree Fruits* where the picketed product constituted a substantial part of the business of the picketed outlet. (*Dow* involved picketing of a brand name gasoline station because of a strike at the refinery of the primary employer. Like *Tree Fruits*, this involved picketing a secondary because of a strike against a primary; here no primary-secondary situation is present.)

As the *Dow* dissent points out, nothing in *Tree Fruits* supports a reading which restricts it to cases where the picketed product constitutes an insignificant part of the business of the neutral. *Dow* still faces judicial review and even its current viability within the Board itself is open to question since the Board Chairman who was one of the three in the majority was not reappointed and the term of a second member of the majority has expired and he has not yet been reappointed.

Nevertheless, if *Dow* is correct and if Southern Skins was the primary, then the unions would be relegated to picketing only at department and retail stores in which garments made of Argentine skins constituted only a minor part of the business of the stores. Such picketing — far removed from the scene and involving countless secondaries — would be lawful under *Dow*, while picketing at the source of the problem, South American, would not. Yet, the effectiveness of the First Amendment depends upon the ability of the unions to publicize the origin of South American's skins within the fur market and at the point of impact in that market. It would be futile, confusing, and

absurdly disruptive to limit the picketing, as *Dow* would require, to stores, outside of the market, which sell garments made of Argentine skins as an inconsequential part of their business.

The irrationality of such a result is avoided by recognizing the realities of this case for what they are: one in which the unions are exercising their free speech right to protest the activities of a seller whom they consider to be a purveyor of injurious products and to appeal to prospective buyers for support to save and provide jobs for their members, when these appeals are not accompanied by any of the secondary effects which the Act is intended to prevent.

III. THE RATIONALE OF *MOBILE STEAMSHIP* BARS FEDERAL INTERJUNCTIVE RELIEF.

Petitioner's memorandum (at pp. 10-12) anticipates respondents' citation of *American Radio Association v. Mobile Steamship Association*, 415 US 947 (December 18, 1974), as a bar to the requested relief and attempts to distinguish that holding from this case. We submit that the attempt is not successful.

Mobile Steamship holds that picketing a foreign-owned ship employing foreign seamen while it was loading at an American port affords a basis only for State, but not Federal, intervention. The Court held that such picketing "did not even 'arguably' violate §8(b)(4)" of the Act "[s]ince Congress did not intend to strain through the filament of the NLRA picketing activities which so directly affect the maritime operations of foreign vessels." (43 LW 4068, 4072.)

Mobile Steamship is the most recent of a series of cases (cited in fn. 7 of the majority opinion) in which the Court since 1963 has excluded from the Act's definition of "commerce" the activities of foreign-owned and foreign-manned vessels while in domestic ports, holding that Congress had not intended to intrude into the affairs of foreign ships. The Court therefore concluded, as

it had previously held in *Windward Shipping (London) Ltd. v. American Radio Association, AFL-CIO*, 415 US 104 (1974), that the Federal pre-emption doctrine otherwise applicable to cases "arguably" covered by the Act (*San Diego Building Trades Council v. Garmon*, 359 US 236 (1959)), did not apply to picketing intended to exert "pressure so that foreign vessels would be forced to raise their operating costs to levels comparable to those of American shippers." (415 US, at pp. 113, 114.) In both these cases, the Court therefore upheld the power of state courts to enjoin such secondary picketing if it was the public policy of the state to prevent it.³

If petitioner's claim that this case involves a primary dispute with the Argentine manufacturer is tenable, then *Mobile Steamship* bars a Federal injunction because if Congress did not intend, by the NLRA, to control labor relations on foreign-owned and -operated vessels neither did it intend by this legislation to control labor relations in fur-dressing factories in Argentina. It therefore follows that New York's public policy only controls. In New York, unlike Texas and Alabama whose laws were involved in *Windward* and *Mobile Steamship*, secondary picketing of one who handles a struck or labor-control product has long been held lawful.

"Concededly the defendant union would be entitled to picket peacefully the plant of the manufacturer. Where the manufacturer disposes of the product through retailers in unity of interest with it, unless the union may follow the product to the place where it is sold and peacefully ask the public to refrain from purchasing it, the union would be deprived of a fair and proper

³ However, in fn. 9 the Court distinguished cases where the pickets "were primarily engaged in a dispute as to whether an employer should hire unionized or non-unionized American workers." There is no such dispute in this case; here the dispute concerns the sale of foreign products; in the cited cases it concerned the use of foreign vessels.

purchasing it, the union would be deprived of a fair and proper means of bringing its plea to the attention of the public."

Goldfinger v. Faintuch, 276 NY 281 (1937).

Petitioner further argues that in fn. 10 of *Mobile Steamship* the Court reaffirmed that its holding was not intended to cast doubt "on those cases which hold that the Board has jurisdiction under §8(b)(4) of domestic secondary activities which are in commerce, even though the primary employer is located outside the United States." However, each of the footnoted cases involved a form of secondary activity wholly absent here, e.g., work stoppages by longshoremen to force domestic shippers to use domestic vessels. These are the "isolated evils" at which, *Tree Fruits* holds, §8(b)(4) is aimed. Nothing like that has happened here.

Therefore, if petitioner's fanciful theory of the case, that it arises out of respondents' dissatisfaction with labor conditions in Argentina, were accepted, an injunction would be barred by *Mobile Steamship*, since the picketing here has not caused any of the secondary results which concern the Act, and the picketing is lawful under New York law.

If, as respondents contend, their dispute is with South American alone and that they have no interest or concern with labor conditions in Argentina, then their dispute with South American is primary and their activities are protected by the First Amendment and the free speech proviso of the Act. Cf. *Lebus v. Seafarers International Union*, 38 LC ¶12,492 (EDLa., 1968), where the court denied a §10(1) injunction finding that the picketing was against implementation of a second union's apprentice program for assigning personnel to work which belonged to the picketing union. The Board had alleged that the picketing was to compel an assignment of work. See also: *Kaynard v. Teamsters, Local 282*, 56 LC ¶12,256 (EDNY, 1967), denying a 10(1) injunction where the picketing was to protest the rental of equipment from sub-

standard manufacturers, Judge Weinstein holding that such picketing to preserve work was lawful.

IV. IN THE GUISE OF SEEKING A §10(1) INJUNCTION, OSTENSIBLY TO PROTECT THE FREE FLOW OF COMMERCE, PETITIONER IS IN REALITY ASKING THIS AMERICAN COURT TO ENFORCE AN ARGENTINE LAW THAT IS IN FACT INTERFERING WITH THE FREE FLOW OF COMMERCE.

The Constitutional foundation of the Wagner, Taft-Hartley, and Landrum-Griffin Acts is the commerce clause. The only rationale for finding *any* conduct violative of these acts is that, either immediately or remotely, such conduct interferes with "the free flow of commerce". The irony of the instant application is that petitioner, in seeking injunctive relief under the commerce umbrella, is in actuality petitioning this United States Court to put teeth into an Argentine law that is effectively obstructing that free flow of commerce. This is readily demonstrated:

Respondent unions are interested only in inhibiting South American's sale of *dressed* skins, and their picket signs so say. They are not at all interested in discouraging South American's sale of raw skins imported from Argentina. Indeed, both South American and respondent unions would delight in an increased influx of raw skins. South American's principal has testified (in his deposition before trial) that these are eminently salable and that he cannot get enough of them; and respondent unions would welcome the employment created by the importation of more raw skins.

But South American does not have a free economic choice respecting the volume of imported raw skins. By force of Argentine law, South American's Argentine supplier is permitted to export only *one raw skin for every four dressed skins*. This quota was promulgated, and is being enforced, for the blatantly obvious purpose of protecting the Argentine fur industry, Argentine fur workers, and Argentine fur unions.

In relying on *Dow* in an attempt to distinguish respondents' conduct from that accorded approval in *Tree Fruits*, petitioner points to the fact that the product of South American being picketed constitutes 80% of South American's volume, to wit, dressed skins from Argentina. (Apparently petitioner would have no quarrel with respondents if they picketed South American's 20% of raw skins, because that would make the case akin to the insubstantiality of the apples in *Tree Fruits*.) But the predominance in South American's inventory of the dressed skins being picketed is not, as is the Bay Gasoline in *Dow*, the result of economic forces operating in a free market, but is rather the direct result of Argentine decree that four dressed skins must be exported for every raw skin.

Thus, to contend, as petitioner does, that the sin in respondents' picketing is that it is directed against a "substantial" portion of South American's product, when in fact that "substantial" portion (i.e., dressed skins) is the direct result of Argentine fiat, is to stand American labor law on its head.

If South American, with its eyes wide open, wishes to accept the economic duress imposed by Argentina in the latter's effort to aid its native workers, that is South American's affair. But then it cannot complain if an American union, in a counterpart effort to protect American jobs, truthfully informs the public of the source of and motivating force behind the dressed skins. And it is a grotesque travesty when the National Labor Relations Board, which is supposed to protect the "free flow of commerce", actually undertakes to aid a foreign-mandated interference with that free flow by characterizing an American union's open and lawful response to such duress as unlawful duress itself.

Thus, in the light of the real facts and relationships, it is seen that petitioner is actually requesting this United States Court to enforce a foreign decree not only inimical to American labor but also obstructive of the free

flow of commerce – the *raison d'être* of the entire Act in which Section 10(1) is contained.

V. AN INJUNCTION IS INAPPROPRIATE IN ANY EVENT.

Although §10(1) requires the Board to apply to the District Court for an injunction in every case where its investigation of a charge of proscribed secondary activity shows “reasonable cause” to believe that the charge is well founded, it by no means follows that the Court is obliged to rubber-stamp the petition or to conclude that an injunction is appropriate.

On the contrary, the Court’s function is to make an independent evaluation of both the factual and the legal bases for such “reasonable cause” (*Danielson v. Joint Board of Coat, Suit and Allied Garment Workers Union*, 494 F.2d 1230 (2nd Cir., 1974))⁴ and of the need for the relief, i.e., whether injunctive relief is appropriate even if “reasonable cause” exists (*Douds v. Wine, Liquor, and Distillery Workers Union*, 75 F. Supp. 447, 14 LC ¶64,628 (SDNY, 1948), Ryan, D.J.,⁵ and cases discussed in *Danielson, supra*). See also: *Carpenters v. Sperry*, 170 F.2d 863, 15 LC ¶64, 814 C.A. 10, 1948.

As already noted, the only jurisdictional basis of §10(1) is an unlawful secondary activity charge under §8(b)(4). Yet, in an effort to bolster its case, the petition emphasizes two instances of alleged violence claimed to have occurred on May 9 and 13. These charges rest on §8(b)(1) (restraint “and

⁴ *Danielson* unanimously reversed the grant of an injunction by Judge Gurfein (367 F. Supp. 486). After an extensive review of the cases, the Court held that while the District Court should be “hospitable to the views of the General Counsel, however novel”, Congress intended “the courts to perform their traditional role rather than enjoin conduct which they consider clearly lawful” (at p. 1245) and that no injunction should issue where, after full study, the District Court does not agree with the General Counsel’s legal position.

⁵ “Consideration of the provisions of Section 10(1) of the Act giving the Court jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper clearly discloses the intention of Congress that the court was to exercise its discretion to fit the needs and circumstances of each particular case.” 75 F. Supp. 447, at p. 451.

coercion"), not §8(b)(4). Furthermore, there is no claim that §8(b)(1) violations have recurred or that recurrence is threatened. In addition, neither incident involved the Joint Board in any way, and the charges against Locals 2 and 3 were dismissed in the Criminal Court. Finally, before the present hearing these locals offered to enter into Board cease and desist stipulations not to engage in such activities. We therefore submit that these allegations are not material to the present petition since Section 10(1) does not afford a basis for injunctive jurisdiction against §8(b)(1) charges; the acts were isolated and minor; and an injunction is unnecessary since the offered stipulation would provide a basis for contempt proceedings if it were violated.

An injunction is otherwise not appropriate. The boiler-plated brief in support of the petition fails to analyze this case for what it is: a case of free speech picketing of a primary and not a neutral.

These respondents have as much right, by peaceful picketing, to urge their colleagues in the fur industry to buy American as anyone else has. So long as their picketing is untainted by any aspect of secondary purpose or result which §8(b)(4) narrowly identifies and specifically proscribes — refusals by employees of other employers to deliver, pick up, or handle⁶ — the First Amendment fully protects that activity without regard to whether one agrees with it.

Conversely, the strong policy of protecting and informing consumers, buyers, investors, etc., reflected in growing "truth-in" legislation, makes it plain that there is a growing concern over the right of consumers, in this case manufacturers, to be alerted that South American's skins are not domestically processed so long as the buyers are not subjected to §8(b)(4)-barred secondary pressures.

⁶ Section 8(b)(4) permits such picketing "as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution."

South American's right under the Act is not to be subjected to such secondary pressures. That right has been respected and no injunction is necessary to prevent its violation.

For each of the foregoing reasons, the petition should be dismissed.

Respectfully submitted,

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By: /s/ Harold I. Cammer

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August 12, 1975

TRANSCRIPT OF PROCEEDINGS

[1]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SIDNEY DANIELSON, Regional Director,
Region 2 of the National Labor Relations
Board, for and on behalf of the NATIONAL
LABOR RELATIONS BOARD,

Plaintiffs,

VS.

75 Civ. 3438

FUR DRESSERS, LOCAL 2F, AMALGAMATED
MEAT CUTTERS and BUTCHERS WORKMEN
OF NORTH AMERICA, AFL-CIO, et al.,
Defendants.

Defendants.

Before:

HON. KEVIN THOMAS DUFFY,

District Judge,

New York, August 27, 1975,

2:00 p.m.

APPEARANCES:

ALEXANDER P. ROSENBERG, ESQ.,

Attorneys for plaintiffs

ROBERT MARKEWICH, ESQ.,

Attorney for defendant Fur Dressers, Local 2F

HAROLD CAMMER, ESQ.,

Attorney for Amalgamated Meat Cutters and Butchers Workmen of North America, AFL-CIO, et al.

Also Present:

Serge Jarvis, Esq.

[2] (Case called.)

THE COURT: Both sides ready?

MR. ROSENBERG: Yes, your Honor.

MR. MARKEWICH: Yes, your Honor.

THE COURT: How many witnesses do you expect?

MR. MARKEWICH: Your Honor, my name -

THE COURT: How many witnesses do you expect? Do you have any witnesses at all?

MR. ROSENBERG: Your Honor, petitioner expects to have one witness. However, outside, prior to this meeting, Mr. Cammer indicated a witness he has who is from the manufacturers association who has a commitment at approximately 4 o'clock this afternoon -

THE COURT: Do you want to take him out of turn?

MR. ROSENBERG: Yes.

THE COURT: Call your witness.

MR. CAMMER: Your Honor, I would like to call your attention to the fact that Mr. Markewich is hard of hearing.

MR. MARKEWICH: That is why we have reversed our position.

[3]

IRVIN H. HECHT,

called as a witness by defendants, being first duly sworn, testified as follows:

THE COURT: Mr. Hecht, by whom are you employed?

THE WITNESS: By the Associated Fur Manufacturers.

THE COURT: Is that a manufacturers association?

THE WITNESS: Yes, sir.

DIRECT EXAMINATION:

BY MR. CAMMER:

Q. What is your position with the association? A. I am the executive vice president.

Q. Do you hold any other office in the fur industry? A. Yes, I do. I am president of the American Fur Industry.

Q. What is the American Fur Industry? A. An organization comprised of many facets in the fur industry, such as the manufacturers, retailers, wholesalers, skin dealers — skin merchants, I should say, silk people, ranchers and fur farmers, which would be the same as ranchers.

[4] Q. How long have you been associated with the fur industry?

A. Thirty-nine years.

Q. Where is the fur industry located? A. Well, it runs from 30th Street to 28th Street, from Seventh Avenue to Eighth Avenue.

THE COURT: Are you sure you want that to stand?

Repeat the question and answer.

(Record read.)

Q. By "fur industry" you mean the fur manufacturing industry?

A. Yes.

Q. How many manufacturers comprise the industry at the present time?

THE COURT: Approximately.

Q. Approximately. A. In my organization there are 250 manufacturers.

Q. How many comprised the industry 10 to 15 years ago, approximately?

A. Eight hundred.

Q. How many workers are now employed —

MR. ROSENBERG: Objection, your Honor. This is totally irrelevant.

[5] THE COURT: I will permit it. It is supposed to be leading up to something. Go ahead.

Q. How many workers are currently employed, approximately, in the fur industry? A. In the fur manufacturing industry I would say there are approximately 3000 workers employed.

Q. How many were employed 10 or 15 years ago? A. Eleven, twelve thousand.

Q. What accounts for the attrition?

THE COURT: Sustained.

MR. ROSENBERG: Objection, your Honor.

THE COURT: I have just won.

Go ahead.

Q. As a result of this attrition, has the industry engaged in any promotional effort? A. Yes, sir.

Q. How has the effort been organized? A. In 1971 the fur industry was in the doldrums and we convened – some of the leaders of the industry convened all the segments of the industry at a meeting at a hotel, and the result of that meeting was a voluntary contribution by the various segments of 1/3rd of 1 percent of their volume, and that fund was established to engage
[6] in public relations, in promotion of furs and with regard to conservation.

THE COURT: I hope you really wanted that answer.

MR. CAMMER: Sir?

THE COURT: I said I hope you really wanted that answer.

MR. CAMMER: I think I do, your Honor.

THE COURT: Is anyone here from the Anti-trust Division?

Go ahead, ask the next question.

Q. Has part of the promotional effort consisted of the "Buy American" campaign? A. Yes, that was a key function of the organization.

Q. What has been the direction of the "Buy American" promotion?

A. A tag is put on the garment which states that this garment is made in America, it expresses the fine workmanship and conditions under which these garments were made.

Q. What is the relationship of the fur dressing and dyeing industry to the fur manufacturing industry? A. With fur dyeing and dressing we

would have no garments which could be completed. They work on the skins
[7] and our manufacturers receive those skins after they are processed.

Q. What does the processing consist of? A. It consists of dressing the skins, dyeing of the skins.

Q. What does dressing of skin mean? A. If the skin comes into a dressing plant, it comes in raw and these skins are fleshed, the flesh is taken off them, they are made pliable, usable, to be used into a fur coat, and some skins are dyed.

Q. What has happened to the fur dressing and dyeing industry, the domestic dressing and dyeing industry, in the last few years? A. I would say we have had 20 to 25 dressers. We now have five.

Q. Are you familiar with the embargo which Argentina has put on the export of South American lamb skins? A. Yes, sir.

Q. Will you state what the embargo does? A. Well, the embargo permits 80 per cent of the raw skins to be sent, to be shipped abroad, and 20 per cent to be dressed in Argentina.

[8] Q. I'm not sure I understand your answer.

THE COURT: I did. Eighty per cent are supposed to be dressed in Argentina, is that correct?

THE WITNESS: Yes, sir.

THE COURT: And 20 per cent are shipped raw?

THE WITNESS: Yes, sir.

Q. And I take it that the 20 per cent that are shipped here are dressed and dyed here? A. Are dressed and dyed here, yes.

Q. Is it possible to tell from a skin which has been dressed and dyed whether it has been dressed and dyed in Argentina or in the United States?

A. I would say only if there is a stamp put on the skin that it was dressed and dyed in the United States. There would be no other way that I could ascertain where the skin was dressed.

Q. Has there been, to your knowledge, an experience by fur manufacturers, American fur manufacturers, with Argentine dressed skins? A. Yes, sir.

Q. What has been that experience? A. As far back as 1973, I recall receiving complaints from our manufacturers that the skins dressed from the Argentine were not suitable, they would crack, and that they were not usable in their fur garments, and the very reason they complained about it, because under our collective agreement which we have with the union there is a guarantee of 26 weeks of work, each worker is entitled to receive that guarantee whether there is work or no work.

These manufacturers contend that if they have to be subjected to or use the dyed skins from the Argentine, that they would have to stop production and they would never meet their guarantee.

MR. ROSENBERG: Objection your Honor. I move to strike the whole line.

THE COURT: No, I will permit it to stand.

Q. Do you have personal knowledge with respect to whether fur manufacturers do or do not wish skins, Argentine skins, to be dressed and dyed in the United States as contrasted to being dressed and dyed in Argentina?

MR. ROSENBERG: Objection.

THE COURT: Sustained.

Q. Do you have personal knowledge with respect to whether fur manufacturers would knowingly buy Argentine dressed skins if domestic dressed skins were available?

MR. ROSENBERG: Objection.

THE COURT: I will permit it. Go ahead.

A. No, they would not buy the Argentine dressed skins, as I stated before.

THE COURT: That's your opinion, is that correct?

THE WITNESS: No, sir. I received complaints from manufacturers of this merchandise.

THE COURT: You testified as to that. Based on that you have an opinion and your opinion is that -

THE WITNESS: Yes, sir.

MR. CAMMER: Thank you very much.

(Witness excused.)

THE COURT: Next witness.

MR. ROSENBERG: With the court's permission, I would like to present a letter of legal argument which responds to the memorandum of law.

THE COURT: Was this served on your opponent?

[11] MR. ROSENBERG: Copies have been given to all parties today.

MR. CAMMER: In this courtroom today, your Honor.

THE COURT: Do you want to respond to it?

MR. CAMMER: I haven't had a chance to read it.

THE COURT: I had that feeling.

Go ahead.

MR. ROSENBERG: Petitioner calls Philip Fabrykant.

PHILIP FABRYKANT,

called as a witness by plaintiff, being first duly sworn, testified as follows:

THE COURT: Mr. Fabrykant, by whom are you employed?

THE WITNESS: South American Fur & Skin Company, Incorporated.

THE COURT: What is your position?

THE WITNESS: I am the president of the corporation.

THE COURT: How long have you been so employed?

THE WITNESS: Since April; five months.

[12] THE COURT: Before that, did you hold a position with the same firm?

THE WITNESS: No, I did not.

THE COURT: Go ahead, counsel?

DIRECT EXAMINATION

BY MR. ROSENBERG:

Q. Mr. Fabrykant, in which state is South American incorporated?

A. New York.

Q. Approximately when was the corporation formed? A. Approximately April 18, 1975.

Q. Where is its place of business? A. At 204 West 30th Street, New York City.

Q. Mr. Fabrykant, what is the nature of the business of South American? A. To import from South America raw and dressed skins.

Q. Do you sell it retail or do you sell it wholesale? A. Wholesale.

Q. To what types of customers do you sell the skins? A. To fur manufacturers.

Q. Do you sell to other wholesalers also? A. Never.

[13] Q. Do you sell to the man on the street? A. No.

Q. When did South American actually start its operations? A. I don't recall exactly the first importation, if that's what you mean.

Q. Just approximately when did you open your doors for business?

A. I would say approximately April 18th, April 19th. I don't recall exactly.

THE COURT: Of this year?

THE WITNESS: Of this year, 1975.

Q. Mr. Fabrykant, from where do you import your skins? A. From Argentina.

Q. Do you import them from any particular company? A. Yes.

Q. What is the name of that company? A. Southern Skin Traders Corporation.

Q. Do you import your skins from another company? A. No, I don't.

[14] Q. And therefore you don't import them from any other country either? A. No, I don't.

Q. Since your company commenced business what is the dollar value of your furs and skins which you have imported from Argentina? A. I don't have the exact figures, but it would be about 60, 70 thousand dollars.

Q. Will you please tell us what types of skins and furs you import? A. Yes. I bring in foxes, I bring in some lambs, nutrias, and I have brought in also some borregos.

Q. When you bring in skins, are they raw or are they dressed? A. Sometimes they are raw and sometimes they are dressed.

Q. The skins that you have imported since you opened business, approximately what percentage have been dressed skins and what percentage have been raw skins? A. About 80 percent has been dressed and 20 per cent has been raw.

Q. Can you please tell us what a dressed skin is? A. A dressed skin, with my knowledge, is a skin that is taken off the animals back, it dries, [15] it is put into some kind of washing method with some chemicals, and later it is, what I have heard, a drumming process.

THE COURT: In shorthand, you heard the prior witness say what he considered to be a dried skin?

THE WITNESS: I didn't pay attention. I know of my knowledge. It's a specialized skill.

A. It is finally drummed to make the leather completely softer and the hair more appealing. It's like a fluffing-out kind of process.

Q. The raw skin is one off the animals back which hasn't been put in that process you have referred to? A. Yes.

Q. When you get skins from the Southern Dressing Corporation in Argentina, is there any marking on the hide of the skin? A. Yes.

Q. What is that marking? A. "Industria Argentina," meaning the equivalent of "Made in Argentina."

Q. How is this marking affixed or placed on the skin? A. It's at the bottom of any skin, running from left to right, across the skin.

[16] Q. Is it stamped in, inked on, sewn on? A. It is inked on.

Q. When you import dressed skins, what, if anything, do do with them?
A. Well, when I bring them in, I send them out for a re-dressing process, if you wish to call it, because the dressed skin I bring in, I guess in the technical word, is not fully dressed, although I wouldn't be able to explain the difference. It needs additional work in this country to make it more acceptable by the American trade.

Q. You send it out for re-dressing? A. Yes.

Q. To whom do you send your skins for re-dressing? A. Well, on occasion I have sent out skins to Soma Associates.

Q. Where are they located? A. They are located at 838 River Road, Edgewater, New Jersey.

Q. Is that company also known as Mirode? A. Yes.

Q. Do you have an agreement with Mirode to re-dress the skins?

[17] A. No; an oral.

Q. Do you have an oral understanding with them? A. Sure.

Q. If you know, does Mirode have a contract with a labor organization that represents its employees?

MR. MARKEWICH: Objection.

THE COURT: That's hearsay. Do you really want it in? I would assume both sides would agree Mirode does have an agreement with some labor organization. We will get to that eventually.

Go ahead, next question.

MR. ROSENBERG: At this point, your Honor, attached to our original memorandum of law is a copy of a settlement agreement which was concluded

in Region 22, Newark, by Local 2F and 3F and Mirode, in which they indicate that Mirode has a contract with the Teamsters Union.

THE COURT: Go ahead.

Q. Does your company, South American, have a contract or agreement with any labor organization? A. None, no.

Q. Do you have any employees other than yourself? A. None.

[18] Q. Do you know a man named Henry Foner? A. Yes, I do.

Q. Who is Mr. Foner, if you know? A. Mr. Foner is the president of the — I do not know the exact title.

Q. Would that be the Joint Board? A. The Joint Board of the Amalgamated Meat Cutters.

Q. Is Mr. Foner here today? A. Yes.

Q. Will you point him out, please? A. The gentleman on the left in the front row.

THE COURT: Identification conceded?

MR. CAMMER: Correct.

Do you want to stand, Mr. Foner.

THE COURT: All right.

Q. Mr. Fabrykant, when was the first time that you met Henry Foner?

A. I met Mr. Foner about between April 21st or the 25th. It was that week, my first meeting with him.

Q. How did you meet him? A. He came to my office.

[19] Q. Was anybody else present that you can recall? A. He came with another gentleman, which I don't remember the gentleman's name.

Q. Have you seen that gentleman since? A. I haven't seen him since.

Q. Will you please, as best you can, reconstruct any conversations that you had with Mr. Foner? A. Yes. Mr. Foner saw the merchandise that I had on display, and he mentioned to me that we would have a problem

because I would be bringing in dressed skins, so-called processed skins, and they should be processed here in America.

And I pointed out to Mr. Foner, I didn't know if he knew at that time, but there is an embargo and many other laws, which I don't even know them myself and which people in Argentina themselves don't know. It's not only an embargo of how many raw skins can go out as opposed to dressed, it has to do with export duties that have to be paid.

THE COURT: Is this what you said to him?

THE WITNESS: Yes.

[20] A. In other words, I wanted to point out to Mr. Foner, I don't know the whole industry, but I am aware as he is aware, that raw skins principally cannot come out of Argentina.

He explained to me, in order not to be in any conflict with the union that he represents, I would have to bring them in all dressed, and I said it's impossible.

THE COURT: All dressed or all raw?

THE WITNESS: I'm sorry. All raw.

A. I said the only thing I can do to bring them in all raw is if I fooled the Argentine government and somehow, somewhere smuggled them out of Argentina, at which point Mr. Foner said, "That's your problem; just give us raw skins."

That was the end of the conversation, except I mentioned at that time perhaps he was here to visit me because eventually if my business would go, perhaps he would want me to hire a worker from his union, perhaps a delivery boy, and that's how we left it.

Q. Do you know an individual by the name of Jack Mazin? A. Yes.

Q. Who is Mr. Mazin? A. I don't know the title of the gentleman.

[21] MR. ROSENBERG: Will you concede Mr. Mazin is a business representative of Local 2F?

MR. MARKEWICH: No.

Q. When did you first meet Mr. Mazin? A. I met Mr. Mazin about April 30th, about.

Q. Where did you meet him? A. He came into my store.

Q. Was there anyone else present? A. No.

Q. Did you have a conversation with Mr. Mazin? A. Yes. Mr. Mazin mentioned to me that he was a representative of the union.

MR. MARKEWICH: Your Honor, until Mr. Mazin's connection with the respondent is established I will object to any testimony about him.

THE COURT: I will take it subject to connection.

A. He mentioned to me, describing himself as somebody from the union, and what have I done here by importing some dressed skins from Argentina.

I said to him, "If you represent a union, I spoke to Mr. Foner, and I'll confer with him about any developments."

[22] He said, "No, no, let me just tell you you will create a big problem, you'll get yourself in trouble by bringing in dressed merchandise. And even if you would be successful selling to manufacturers," he would make sure the manufacturers would complain by giving them back to me. They would complain they would break, were burned, and technicalities that would have to do what a dressed skin tolerates or don't in the manufacturing process.

Q. The term "burned" doesn't mean somebody takes a match to them and lights them on fire? A. No. From what I know, the technical meaning of this is, if a skin somewhere in the dressing process gets a little burned - and I don't know how burned it comes to - when the manufacturer sometimes stretches it on his nailing table, they crack, they break. And usually the story is -

Q. Fine. Thank you.

Did you again have occasion to meet with Henry Foner? A. Yes.

Q. And when was that? A. I met with Mr. Foner about May 7th, I believe, or May 5th.

[23] Q. Would May 5th sound right? A. Yes, May 5th.

Q. Where did you meet with him? A. Mr. Foner came to my office with other two people.

Q. Who were the other two people? A. Mr. Si Sobin, who represents Local — I'm not sure which local he represents; you must excuse me, I don't know the exact title.

MR. ROSENBERG: Can we stipulate Mr. Sobin represents Local 2F, Mr. Markewich, or is a manager of some type of Local 2F?

MR. MARKEWICH: YES.

A. And also Mr. Paul Catani, who represents the Fur Floor Workers, I believe.

Q. Is that Local 3? A. Yes.

MR. ROSENBERG: Mr. Markewich, can we stipulate Mr. Catani is the manager of Local 3F?

MR. MARKEWICH: Yes.

MR. ROSENBERG: Thank you.

Q. On May 5th, when these three gentlemen came to your store, did you have a conversation with them? A. Yes. The conversation was carried out

[24] between myself and Mr. Foner. Again we discussed what was discussed in the previous opportunity, and now Mr. Foner also had two — not the cards —

Q. Picket signs? A. — two signs, which he said to me that this is what they are prepared to do — that is, to picket me — if I will not refrain from bringing in dressed merchandise.

Again I explained the whole story of the embargo and everything. He admitted that he knew and I offered to come to some kind of an arrangement, meaning since the skins —

THE COURT: No. Tell us what you said. Don't tell us what you meant.

A. I pointed out to Mr. Foner that the skins have to be re-dressed, and I also don't want to be in conflict with the union. Therefore, under the numerous tanneries, or dressing houses, that fall under the Amalgamated Meat Cutters' jurisdiction — I don't know how you wish to call it — why could I not give my skins to dressers to further dress my skins, and therefore I wouldn't be in any conflict with anybody.

[25] Mr. Foner said to me as I think he discussed something with Mr. Sobin, that it could be done, and when I asked what kind of price would they charge me, they said, "Full price of dressing as though the skin was never dressed."

I said, "That's ridiculous because if I have to pay those prices, you'll put me out of business," to which Mr. Foner said, "That's what we'll have to do, put you out of business."

I also showed to Mr. Foner, based that he knew of the embargo with Argentine raw skins, coming out of Argentina — I showed him about 1300 or so dressed foxes, and I also took the gentlemen with Mr. Foner to my vault where I had 1500 raw foxes. And Mr. Foner understood that under the current situation it's, you know — perhaps these are my words — it's pretty good that I have such a percentage of raw against dressed. But this didn't seem to make an impression on Mr. Foner.

I also pointed out to them, because I think Mr. Sobin explained that the skins don't even show origin, at which point I pointed out it says "Industria Argentina," which is "Made in Argentina."

[26] Q. Did anything else happen during that conversation? A. Yes. I can't remember exactly. I don't recall right now.

THE COURT: That's as much as you recall?

THE WITNESS: At this moment. There was more.

Q. Do you recall the gentleman indicating — A. Yes, I recall. Mr. Fonder did say to me, "In any event, Mr. Fabrykant" — because I guess

they noticed I am trying to to some arrangement — Mr. Foner said to me, "Look, I will call you before we decide to picket you, it's only fair I should do that," and that's the way we left it.

Q. Did there come a time —

THE COURT: Just a minute. I have to make a phone call. I will be right back.

(Recess.)

BY MR. ROSENBERG:

Q. Mr. Fabrykant, did there come a time when picketing commenced at Southern — South American Skin? A. Yes.

Q. When was that? A. May 8th, I believe.

MR. ROSENBERG: Your Honor, I call your attention to allegation 5(m),
[27] which sets forth the text of the picket sign, which has been admitted by all parties.

Q. For how long did the union picket your premises? A. July 29th, 2 p.m.

Q. Is that when they stopped? A. That's when the picketers were not there any more, although they are still there, not picketing — I don't know the technicality — distributing leaflets.

Q. Starting on May 8th, approximately how many people were picketing your place? A. One.

Q. Did there come a time when more people started to picket your facilities? A. Yes.

Q. To what number did that grow?

MR. CAMMER: Objection, your Honor.

THE COURT: First of all, let's start with when did more people picket.

THE WITNESS: More people started picketing as of May 12th, I believe. I don't recall exactly.

Q. To the best of your recollection --

[28]

MR. CAMMER: Your Honor, objection.

THE COURT: To what?

MR. CAMMER: The Board complaint is picketing, not the number of pickets.

THE COURT: That's part and parcel.

How many people were there on May 12th?

THE WITNESS: On May 12th, in the afternoon, I would say as many as eight to ten.

THE COURT: How big is the entrance to your place of business?

THE WITNESS: The door is 27 inches wide.

THE COURT: Is this a storefront?

THE WITNESS: It's a storefront. It's a little store.

THE COURT: How long did you have the eight to ten?

THE WITNESS: For about a day, perhaps a day and a half.

THE COURT: After that time how many were there?

THE WITNESS: No more than four at one time, not all of which carried signs.

THE COURT: Did this continue on up until July 29th.

[29]

THE WITNESS: No. The number decreased -- I wouldn't know exactly about when, but it was left at about two people, three people.

Q. Mr. Fabrykant, during what hours of the day did the pickets operate in front of your facility? A. From the moment I opened the door to the moment I closed the door.

Q. What are those hours? A. Anywhere from 8:30 up to 5, 5:30, 6 o'clock sometimes.

Q. Did they picket on weekends? A. Not that I know of.

THE COURT: Were you ever there on weekends?

THE WITNESS: Yes.

MR. ROSENBERG: Your Honor, if we may correct something, this hearing was originally scheduled for July 20th, if I'm not mistaken, and there was a postponement at the request of respondents to take depositions. Part of the agreement for granting the postponement was they cease picketing, and I believe the picketing ceased on July 20th, rather than July 29th.

THE COURT: Is that correct?

MR. CAMMER: Yes, your Honor.

[30] Q. I direct your attention to May 9, 1975. On that day had you made arrangements with Mirode to pick up skins on your premises? A. Yes, I did.

Q. With whom did you make the arrangements? A. Milton Mainwald, I believe.

Q. During the day of May 9th did people from Mirode come to your premises? A. Excuse me?

Q. On May 9th did people from Mirode come to your premises? A. Yes.

Q. And approximately what time of day was this? A. Eleven a. m.

Q. How did they come to your place? A. By truck.

Q. And how many people were there? A. About three.

Q. Was Mr. Mainwald one of them? A. Yes.

Q. Do you know who the other two people were? A. Two helpers.

Q. Were you present when the truck arrived? A. Yes.

[31] Q. Will you please describe what, if anything happened when Mirode's people got to your place of business? A. Well, before they even came into my place, Mr. Mazin had seen them, so immediately upon Mr. Mainwald coming into my store Mr. Mazin charged into my store, dropping names to Mr. Mainwald about his character.

He told me, "Don't give the skins to Mr. Mainwald, you'll never see them again."

I told him, "Mr. Mazin, please, I made my decision, leave the store." He didn't want to leave.

In the meantime one of Mr. Mainwald's helpers had gone to load a box on a hand truck, and as he was leaving Mr. Mazin put his hand over it, blocked it. He said, "You're not going anywhere."

Mr. Mainwald, myself, said, "Please let him go."

He said, "No," and he said to me, "Don't give him, you'll be a dead man in this market, you'll never see the skins again. You don't know what you're doing, you're really causing trouble with yourself, with us, the union."

At which point I said to him, "Please get out of here." There was nothing else to say, and he just stood outside. He left my store.

[32] Q. This is Mr. Mazin? A. Jack Mazin.

Q. From May 8th to May 9th, was Mr. Mazin on the picket line or present on the picket line? A. He was always present. To this day he is present.

Q. What was he doing? A. I wish I knew.

Q. Did he carry a sign? A. Never. As a matter of fact, if I may say, he normally stands in front of my door, with no sign, without anything.

Q. Does Mr. Mazin come to your store at the time that the pickets arrive? A. Did Mr. Mazin come into my store?

Q. Does he arrive at the area of your store at the same time as the men who are picketing? A. No. He comes and goes throughout the day.

Q. Have you ever observed him speaking to the pickets? A. Yes.

[33] Q. Have you heard what he said to the pickets? A. Sure. Many times when people leave my store, all of a sudden Mr. Marin is there trying to check up who it is.

Q. What does he say to the pickets? Have you heard him talk to the pickets? A. I haven't heard him talk to the pickets. Only once, after the occasion on May 12th, I believe.

Q. We will get to that later.

Did Mirode people successfully remove the merchandise from your store and load it on your truck? A. Yes, very quickly.

Q. After Mirode's people took the skins and left did you have occasion to speak with Paul Catani, Mr. Catani? A. Yes. It wasn't really to speak. He threatened me.

Q. When did that happen? A. I would say within five minutes that evening, after all the skins were loaded on the truck and I believe the truck was in motion, I'm not sure, Mr. Catani came charging into my store — it's a good thing the gate was closed — and he just about grabbed himself on the gate and told me, "You are a dead man in this market for giving the skins to this man. If I were you, I'd get my rear end and get the skins to

[34] Argentina."

Q. This was on May 9th? A. On May 9th, as I recall.

Q. I now call your attention to Monday, May 12, 1975. At that day what time did you arrive at your place of business? A. About 8:30.

Q. In the morning? A. A.M., yes.

Q. How many people were picketing at your place of business at that time? A. I don't recall exactly.

Q. Approximately? A. Five.

Q. Were these people walking around or were they standing still?

A. No, they were leaning against my window.

Q. At some subsequent time did they start to parade or — A. Yes. After I called the police and requested that —

MR. CAMMER: I think there has been a lot of leading in this area.

[35] THE COURT: There certainly has.

Q. On May 12th did Mirode people return to your place of business?

A. Yes.

Q. Approximately what time did they return? A. About 10, 11.

Q. How did they return? A. By truck.

Q. Were you there when they returned? A. I was in my store.

Q. Did you see the truck arrive? A. Yes, I did.

Q. What, if anything, did you see when the truck arrived, what happened? A. Mr. Mazin charging -

MR. CAMMER: Your Honor, I object to any further inquiry on this subject and move to strike out the testimony concerning the May 9th incident because - may I be heard briefly on it?

THE COURT: Sure.

[36] MR. CAMMER: Your Honor, we are here under Section 10(L), which is a secondary picketing or secondary boycott case. Section 10(L) does not confer jurisdiction on account of violence, coercion or interference. The naked single question is whether or not the conflict, dispute or picketing here treats him as a secondary party because of a primary dispute with somebody else. It has nothing to do - Section 10(L) - and I am sure Board counsel will agree to this - does not confer jurisdiction because there has been violence or mass picketing or interference, restraint or coercion. It is simply not a jurisdictional basis for a 10(L) case.

THE COURT: It certainly does go to the question of intent, doesn't it?

MR. CAMMER: Intent?

THE COURT: Yes.

MR. CAMMER: You mean the objective of picketing?

THE COURT: That's right. I don't care how you phrase it.

MR. CAMMER: But the violence is not connected with it and the interference is not -

THE COURT: It certainly can be if it is known and condoned by the union, particularly over a period of time.

MR. CAMMER: There are merely two instances, May 9th and May 12th.

[37] THE COURT: That's all we have heard about so far. I don't know what else is coming in.

MR. CAMMER: The complaint only alleges these two isolated instances. There has been no recurrence and there is no claim of recurrence in the pleadings.

THE COURT: I will hear him out.

MR. MARKEWICH: Your Honor, on behalf of Locals 2 and 3, I wish to bring again to your Honor's attention the tender offer that was made by way of my affidavit in order to try to narrow the issues here, instead of permitting them to be muddled. In that affidavit, with the consent of my clients, and without in any way admitting that any of the violence or unseemly incidents of May 12th were caused by my clients or any of their representatives, I nevertheless, just for the purpose of narrowing the issues for the court, said that we will take a temporary injunction as well as a cease-and-desist order against any violence.

Now, this is a proceeding that deals with the future, your Honor, not with the past. We will take a final order against any violence; and further than that, your Honor, I am willing to elaborate upon that original tender offer and say
[38] that we will accept now an injunction and a final cease-and-desist order against any picketing directed to interference with pickup and delivery with respect to Mirode.

THE COURT: Mirode or any other person entering or leave the store, is that correct?

MR. MARKEWICH: That would remove all the issues which are the major portions of this case and leave us with a pure case whether this consumer picketing is permissible or impermissible.

THE COURT: What do you say about it?

MR. ROSENBERG: Your Honor, we are here seeking an order enjoining in any manner or any means threatening, coercing and restraining South American where an object is to cease it doing business with Southern Skin or with Mirode and we are asking for an order to enjoin any picketing at the premises of South American.

Locals 2F and 3F appear to be hoping that they can bifurcate the conduct they have engaged in and thereby remove from the case action which they have taken with respect to Mirode, but we maintain that their conduct with respect to Mirode colors all of the picketing and shows that their object is not consumer picketing but in fact has a cease-doing-business object, both [39] with respect to Mirode and, more particularly, with respect to Southern Skin.

MR. MARKEWICH: I don't know what more we can do than to give them everything, that they are seeking that they are entitled to, that is. Certainly your Honor is aware, and if not I can represent to the court, that before the order to show cause was served there was a request made by the NLRB to cease all picketing of all kinds, consumer and otherwise.

Now, all we are doing now is simplifying the task of the board and of the court and stating in so many words that we are willing to give the board everything it wishes by way of injunction and cease-and-desist order against violence and an injunction and cease-and-desist order against any picketing having the effect or tending to interfere with pickups and deliveries.

Your Honor, if despite that offer —

THE COURT: You have to go further than that: free ingress and egress to the store.

Are you willing to go along with that?

MR. MARKEWICH: Yes, your Honor.

THE COURT: Good. You got that. That injunction is already issued. Formal papers will be drawn up by Mr. Rosenberg.

[40] Now let's get to the rest of the case.

MR. JARVIS: Your Honor, I happen to be the attorney for the man on the witness stand, who is the president of the corporation. I read carefully the affidavit that is submitted by Mr. Markewich on the theory that they would refrain from any violence. But my position, your Honor, is they are proceeding on a theory that my client is interfering with consumer goods.

My client does not deal with consumers. He is selling wholesale to manufacturers, and the position that the union takes, your Honor, and what they reiterate here, has no application.

The issue is, does the union have a right to interfere with consumer goods when my client does not sell to anybody as far as consumer goods. That's my point, your Honor, whether they have a right to picket.

When it comes to —

THE COURT: Do you understand what is happening here? There are three points. One is complete cessation of picketing, one is a complete cessation of picketing which would interfere in any way with ingress and egress [41] to your client's place of business, and one is a complete cessation of violence or threats of violence in connection with any of your client's business.

So far they have been willing to give in as to two out of the three. That injunction you can consider already issued. We still got the third one to go.

If you gentlemen want to take a little time and reassemble your case, it may take no time at all, take 10 minutes.

(Recess.)

MR. ROSENBERG: Your Honor, during the recess we had a conversation with Mr. Markewich, and I believe at this time Mr. Markewich is willing to stipulate that Jack Mazin is an organizer for Local 2F.

MR. MARKEWICH: I am not willing to stipulate; he is. I was asked if he were a business manager. I wasn't asked that question before.

THE COURT: All right.

BY MR. ROSENBERG:

Q. Mr. Fabrikant, referring you back to May 12th, when the Mirode's truck arrived, and you stated in your last answer you saw the truck arrive, what, if anything, happened when the truck arrived? A. A lot of people, [42] I would say, all of a sudden from four, five, they generated to 20 or more, led by Mr. Mazin, approached the truck of Mainwald, or the truck he came with, and started banging on the truck with their fists and I heard a lot of conversation, at which point as the group further gathered, more people and more people -- and nobody was getting off the truck, Mainwald's truck -- I decided to call the police. I didn't even complete dialing 911, the police were there, and all I saw was a lot of people moving, police sirens, whistles, a real big commotion.

All of a sudden there must have been like, I don't know, at least 500 people gathered around. I was afraid even to go out. I stayed in my store. And I saw people from Mainwald and from the union, you know, people just pushing each other -- I wouldn't say punching -- touching. I don't know the exact description, but it was a tremendous commotion when the police came in.

Q. Approximately how far away from this commotion were you when it occurred? A. I was inside my store, maybe about five feet, six, seven feet into my store, and this occurred by the curb.

[43] Q. Could you clearly see what was going on? A. Yes.

Q. Did the people from Mirode come into your place of business finally? A. Yes. Finally they came in. On their way in they were still being -- they were being -- I don't know the exact word -- touched, attacked, by everybody that was there. And "everybody" means union representatives as well as

picketers or workers from other tanneries in the nearby area. I recognized their uniforms.

And by this time the police was like leading them into the store, a lieutenant — I don't recall his name — and in the process what little Mr. Mainwald was coming back to me, a couple of skins got damaged — I have here to show you — and at the end three people came in — all this is within 10 minutes or so — and some people from Mainwald, two of them were bleeding from getting involved in fights.

Q. Did Mr. Mainwald leave with any policeman? A. First of all the lieutenant came in. I explained to him what happened. He escorted me outside because somebody had claimed some skins landed in the garbage truck—

[44] MR. CAMMER: Your Honor, hearsay objection. I thought the violence was out of the case now, your Honor.

THE COURT: It is still part of it.

A. I went outside escorted by the police lieutenant. I didn't find anything. I came back in and again I got threats from Mr. Mazin, "You see what you did. You're a dead man in the market. Look what you caused," as though I was the culprit —

THE COURT: You can strike the part "as though I was culprit."

A. And as I explained to the lieutenant, basically the idea —

THE COURT: Was Mr. Mazin there?

THE WITNESS: No, he was not in my store.

A. The lieutenant started —

MR. CAMMER: Objection. Hearsay.

THE COURT: I have to hear more.

What did the lieutenant say? Was he doing something or saying something?

THE WITNESS: He started mentioning names as to who would go in

what car to the station to file charges, assault charges. And I said if I should go, and he said, "No, you don't have to go, you can stay here."

[45] Then as Mr. Mainwald walked outside he was -- Mr. Catani approached him and managed to hit him in the face, and the last I saw from my angle was that different people were being put in different cars. There was a tremendous scene and -- well, that's enough.

I was pretty shaken up by that.

Q. Did anything else happen on May 12th? A. Yes. Mainwald's truck was parked across the street by a policeman, and the police left, who, I don't know exactly who was involved, other than Mainwald and Mr. Catani, I remained in my store, and by then a whole group -- I think that was asked of me before -- a group of about 20 people or so, without signs, started walking in a circle, spitting at my window and cursing, whatever, and about a half hour later or so I want to close the front door, because I was sick and tired of listening to all this, and Mr. Mazin was there. He mentioned to somebody, "Somebody follow this guy to see where he is going," at which point I said, "Don't bother, I'm closing the door." I wasn't looking for more problems.

[46] That about wraps it up, May 12th, except police were left on the scene, about four officers, which lasted about a week. Every morning when I came in they came, and when I closed the door they left.

Q. Did you make any arrangements to protect Mirode's employees when they make future pickups at your place? A. No. I insured my goods for the pickup that was made the previous Friday.

Q. Did you arrange for police protection for the future -- A. When the delivery took place there was police on the scene.

MR. ROSENBERG: I have no further questions, your Honor.

CROSS EXAMINATION

BY MR. MARKEWICH:

Q. Mr. Fabrykant, do you have any employees? A. None.

Q. Did you have a work stoppage on May 8th? A. No. I have no workers.

Q. Did you sign a paper for the National Labor Relations Board on May 13th? A. I don't recall the date but I did sign an affidavit.

[47] MR. MARKEWICH: May I approach the witness, your Honor.

THE COURT: Sure.

Q. Is this a true copy of your signature? A. That's a copy of my signature.

MR. MARKEWICH: I offer in evidence a charge signed by Philip Fabrykant on May 13, 1975.

MR. ROSENBERG: Your Honor, if I might note, that is already Petitioner's Exhibit 1 attached —

THE COURT: It doesn't matter. Mark it in evidence. You have no objection.

(Plaintiff's Exhibit 1 was received in evidence.)

Q. Did you read that paper before you signed it, Mr. Fabrykant?

A. Yes.

Q. Do you read English? A. Excuse me?

Q. Do you read English? A. A little, yes.

Q. You say you deal only in wholesale? A. Right, yes.

Q. This corporation, South American Skin & Fur was organized on April 18th? A. Correct, 1975.

[48] Q. Did you ever see the certificate of incorporation of South American Fur & Skin Co., Inc.? A. Yes, I saw it.

Q. Did you approve of it before the incorporators filed it with the Department of State in Albany? A. Yes.

MR. MARKEWICH: I offer in evidence the certificate of incorporation.

THE COURT: Could we have a copy rather than taking the man's original.

MR. MARKEWICH: I don't have a copy, your Honor. I will read the pertinent portion.

MR. JARVIS: Your Honor, I drew the certificate of incorporation and I gave him broad powers —

THE COURT: You can have a chance if you want to testify but not yet.

MR. JARVIS: I object to the entire —

THE COURT: If you are a party to this action, fine. If you are not, sit down.

MR. MARKEWICH: With your Honor's permission, 2-B:

[49] "And the purpose is to manufacture, import, export and generally deal and trade at wholesale and retail in all kinds of goods, wares, and merchandising of every kind and description," et cetera.

2-A says:

"To purchase or otherwise acquire, buy, sell, transfer, deliver, hold, produce, manufacture, import, export and generally deal and trade in furs, skins, hide and leathers of every kind, nature and description."

MR. JARVIS: Your Honor, I object to this leading.

THE COURT: Would you please sit down. You will be the next witness, if you want to.

MR. ROSENBERG: So as not to deface this, your Honor, may it be deemed marked?

THE COURT: You have read it in.

Q. From whom do you buy your furs in South America? A. Southern Skin Traders Corporation.

Q. And who is the dealer who represents Southern Skin Trading Corporation? A. To the best of my knowledge, a Mr. Leonardo Grozofsky.

Q. Does this gentleman, Leonardo Grozovsky, have a business, an organized business? A. Yes.

[50] Q. Is he a corporation? A. Yes, that I know of. I don't know his business.

MR. ROSENBERG: Objection. I don't think the witness is qualified to answer anything about Mr. Grozovsky's business.

MR. MARKEWICH: I think I can qualify him in one second.

THE COURT: Ask the question.

Q. To the best of your knowledge, what is the designation of a corporation in Argentina? A. I have no idea.

Q. Is it Inc. or Corp.? A. I don't know.

Q. Does Mr. Grozovsky also have a business entitled Grozovsky S.A.?

A. No.

Q. Leonardo Grozovsky S.A.? A. No.

Q. Does he have anything with "S.A." after it? A. Yes, I'm sure he does.

Q. You say you are sure — A. S.A.C.

Q. What does S.A.C. stand for? A. Societe anonyme.

[51] Q. Your business is located where? A. 204 West 30th.

Q. What does it say on the window of your business? A. The name of my firm.

Q. Which is South American Fur, Skin Company, Inc.? A. Yes.

Q. Does it say anything else? A. Yes, it says "Grozovsky, S.A.C.

Q. Your dealing is with Southern Skin Trading Company and with Grozovsky and both of them, right? A. Yes. Indirectly, yes.

Q. When you met Mr. Foner, did Mr. Foner ever tell you not to do business with Southern Skin Trading Company? A. He said to me not to do any business with South America in the dressed merchandise field.

Q. He said that to you? A. Yes.

Q. Do you remember testifying at a deposition on August 14, 1975?

A. Yes, I remember being there.

[52] Q. Were these questions asked of you and did you answer them -

MR. ROSENBERG: Mr. Markewich, if you are going to be reading from the deposition, will you be kind enough to let counsel know where it is in the document you are reading?

MR. MARKEWICH: Page 20.

MR. JARVIS: Your Honor, I object to reading of the deposition on the following ground. He has never seen the typewritten deposition, he has never given it to us.

THE COURT: Is that true? Is this a signed deposition?

MR. JARVIS: No.

MR. MARKEWICH: Not true. I got this deposition rushed to me two days ago. I called up Mr. Jarvis to tell him to bring his client over with the exhibits that he was supposed to deliver and Mr. Jarvis didn't call me back.

MR. JARVIS: The fact is neither my client nor I saw the deposition.

MR. MARKEWICH: He was in a position to order the deposition from the stenographer at the same time and he didn't do it.

[53] MR. JARVIS: You could have delivered it to me.

THE COURT: Do you have anything else to go into besides this deposition?

MR. MARKEWICH: Yes, there is correspondence that he promised to deliver.

THE COURT: Do you have it?

MR. MARKEWICH: No, I haven't got it. It was not delivered to me. It was supposed to be but it was not. I don't need it for the moment, your Honor.

THE COURT: Is there anything else that you are going into?

MR. MARKEWICH: Stock certificates, correspondence with Grozovsky, bills of lading and invoices. All of these were promised in the course of the deposition to be delivered at the time of signing. I called Mr. Jarvis for that purpose and no call back.

THE COURT: Is there anything else that you want to go into besides these items?

MR. MARKEWICH: No.

THE COURT: Mr. Rosenberg, do you know of the existence of this deposition?

MR. ROSENBERG: Yes, I do, your Honor.

[54] THE COURT: Did you know that it was completed?

When was it taken?

MR. MARKEWICH: August 14, 1975.

THE COURT: This is adjourned for two weeks until such time both sides can be ready. The injunction as to both the violence and to the ingress and egress will stand. A temporary restraining order will issue as to everything else in connection with it.

(In the robing room.)

THE COURT: This petition was filed originally on the 21st day of July, 1975. It was adjourned from time to time thereafter at the request of the parties.

I take that back. It was signed the 16th day of July, 1975. Between the 16th day of July, 1975 and the 26th day of August, 1975 it appears to me that such EBT's and everything else should have been completed, signed and filed as provided by the rules.

It appears to me apparently both sides are unwilling to do it and there will be a two-week extension to abide by the rules of the court. During that

two-week extension the two injunctions which have already been issued will be in full force and effect. They are permanent injunctions.

[55] As to the other relief requested by the National Labor Relations Board the temporary restraining order will enter.

Off the record.

(Discussion off the record.)

THE COURT: If you wish to be technical about it, it will be Monday, the 8th.

Mention was made, while we were off the record finding the date, no temporary relief was requested. Temporary relief was requested by the court and is granted.

MR. CAMMER: Your Honor, may I be heard?

THE COURT: About what?

MR. CAMMER: In the first place, your Honor, I haven't consented to any injunction against violence because there are no allegations of violence against my client.

THE COURT: You have consented to the rest of it.

MR. CAMMER: No, I haven't, your Honor. And I do not consent to it.

THE COURT: Then your client is under temporary restraining order as to the full relief requested.

[56] MR. CAMMER: Your Honor, I say to your Honor that I haven't had an opportunity to be heard. I have not been heard.

THE COURT: Go ahead, be heard. I will listen.

MR. CAMMER: The statute clearly states that such an injunction may be granted only after a hearing. There is no provision in Section 10(L) which authorizes your Honor to grant temporary interim relief. Section 10(L) -- it authorizes temporary restraining order for not more than five days.

THE COURT: All right, September 2nd, 2 o'clock, Room 519.

MR. ROSENBERG: To expedite this matter -

MR. CAMMER: Your Honor, I am ready to go ahead and to offer testimony with regard to this matter. We are dealing here with what we claim to be a First Amendment constitutional right which is entitled to the greatest respect and consideration.

THE COURT: I am not denying you. What I am commenting upon, counsel, is the fact that it is obvious to -

[57] MR. CAMMER: Your Honor, I am not bound by any error that may have occurred in terms of filing the stipulation. I would like to go ahead and be heard.

THE COURT: Do you expect me to bifurcate this into two separate hearings?

MR. CAMMER: No, but my client is not engaged in any misconduct of any kind. There is no allegation in the complaint my client is guilty of any violence or intimidation.

THE COURT: Are you moving to dismiss the complaint?

MR. CAMMER: Yes, I am moving to dismiss the complaint.

THE COURT: On the basis there is no cause of action set forth?

MR. CAMMER: Your Honor, may I ask your Honor, it would help me and I think the court, whether you have had a chance to read our memorandum? I worked 40 hours on this memorandum, your Honor, and I think that ought to be considered. I take this case very seriously. I think my points are valid and correct.

[58] I say to your Honor that there is no case, there is not a single case, where any district court has ever granted an injunction against this kind of picketing and your Honor is making brand new law. There is absolutely no case. I make that representation to your Honor.

THE COURT: So you are making a motion now to dismiss for failure?

MR. CAMMER: Yes.

THE COURT: I will consider it. I have not gone through every case that you cited.

MR. CAMMER: There has been no showing made against my client. I don't think there ought to be an injunction against -

THE COURT: It is a temporary restraining order to keep everything in status quo so that we can have one hearing and finish the case.

MR. MARKEWICH: We are absolutely ready, your Honor.

THE COURT: Did you issue a subpoena duces tecum to bring things here today?

MR. CAMMER: We had assurance from counsel.

MR. JARVIS: What assurance?

MR. MARKEWICH: I am willing to accept the injury done to me by Mr. Jarvis -

[59] MR. JARVIS: What injury?

MR. MARKEWICH: I don't want that to be used as a means of delaying this hearing.

THE COURT: I am not going to continue this. It has gotten down to the point where I am convinced that it would just cause more confusion than anything else for me to go ahead with this today.

MR. MARKEWICH: September 2nd at 2 o'clock, Judge?

THE COURT: Yes.

(Adjourned to September 2, 1975, at 2:00 p.m.)

[61]

* * * * *

New York, New York
September 2, 1975 - 2:00 P.M.

Before:

HONORABLE KEVIN THOMAS DUFFY, District Judge.

APPEARANCES:

ALEXANDER P. ROSENBERG, ESQ., and
RAYMOND P. GREEN, ESQ.,
Attorneys for the plaintiffs.

ROBERT MARKEWICH, ESQ., and
HAROLD CAMMER, ESQ.,
Attorneys for the defendants.

ALSO PRESENT:

SERGE JARVIS, ESQ.,
500 Fifth Avenue
New York, N.Y. 10036

[62] THE COURT: All right, gentlemen, we have a witness on the stand on cross-examination.

MR. MARKEWICH: Your Honor, would your Honor defer to my poor hearing and let me sit over here?

THE COURT: Sure.

MR. MARKEWICH: Thank you.

MR. ROSENBERG: I couldn't hear you, Mr. Markewich.

THE COURT: He wants to know whether he can sit up here and it is perfectly okay.

Why don't you sit directly opposite the witness.

MR. MARKEWICH: Thank you.

THE COURT: All right.

MR. MARKEWICH: Your Honor, prior to continuing the interrogation, I can represent to the Court that the subpoenae which related to the deposition was honored in the following manner: On Friday afternoon, after I had departed for the weekend, Mr. Rosenberg called my partner, Mr. Friedman, and said that he had finally the papers that were supposed to be produced, including correspondence between Mr. Fabrykant and his principal, Leonardo Grozovsky, whose name appears —

MR. ROSENBERG: I don't know that he is a principal, your Honor.

[63] THE COURT: All right. Including correspondence between these two gentlemen.

All right. Go ahead.

MR. MARKEWICH: And when I came to court just now, Mr. Rosenberg handed me a number of bowdlerized letters from Fabrykant to Grozovsky, with a good bit of matter stricken, and I would like your Honor to direct Mr. Rosenberg to give me the originals.

THE COURT: Let me have the originals. I want to see where it is stricken. If it has nothing to do with this case, there is no need for you to look at them. If they do, you can look at them.

MR. MARKEWICH: It is precisely because they became relevant that it was stricken.

THE COURT: It might be.

MR. MARKEWICH: Thank you.

MR. ROSENBERG: Your Honor, these are in Spanish and we had them translated in our office.

THE COURT: Give me the Spanish.

MR. ROSENBERG: Okay.

THE COURT: Counselor, can you go ahead without these letters while I look through them?

(Pause.)

[64]

PHILIP FABRYKANT resumed.

CROSS-EXAMINATION
(continued)

BY MR. MARKEWICH:

Q. Mr. Fabrykant, starting with Mr. Foner, did Mr. Foner ever tell you not to do business with Southern Skin Trading Company? A. No.

Q. Did Mr. — A. May I correct you?

Q. I am sorry? A. May I correct you on the name of the firm? Southern Skin Traders Corporation.

Q. Did Mr. Foner ever tell you not to do business with Southern Skin Traders Corporation? A. No, he never told me that.

Q. Did Mr. Catani ever tell you not to do business with that company? A. No.

MR. MARKEWICH: Your Honor, I direct your attention to Paragraph 5Q of the petition. I am sorry to interrupt your reading.

[65] THE COURT: That is all right. Go ahead. That is what I am here for. 5Q?

MR. MARKEWICH: 5Q.

THE COURT: Yes? Okay.

MR. MARKEWICH: I also direct your Honor to the prayer for relief at the end of the petition.

Q. Prior to Mainwald visiting your shop to show you a sample, had you ever met him before? A. No, I never met him.

Q. Did you know of him? A. Yes, I did.

Q. How had you come to know of him? A. By another Mainwald in the market.

MR. ROSENBERG: Objection, your Honor. I don't see any relevance to this at all.

THE COURT: Go ahead and answer it.

MR. MARKEWICH: It was introduced by the board.

THE COURT: He said by another Mainwald in the market.

A. While I was involved in the previous business that I mentioned to you at one time with my father, this name Mainwald was also in business under the firm of Hartman, Mainwald, Ratner & Meyrowitz, and Mr. Mainwald — I was very quickly introduced once by Mr. Mainwald to Mr. Mainwald.

[66] Q. Did you check him out for reliability and reputation? A. Not at all. This goes back, it must be about, I think, two years. It made no —

THE COURT: I think Mr. Fabrykant's counsel is asking whether prior to the time you started doing business with Mr. Mainwald now did you check him out.

THE WITNESS: No.

THE COURT: Okay.

Q. You testified that Jack Mazin told you in so many words, "Don't do business with that man, he is a crook." Is that right? A. That's right.

Q. Did it occur to you that Mr. Mazin was trying to protect you —
MR. ROSENBERG: Objection.

THE COURT: No, go ahead.

Q. — against a crook? A. What is the question?

Q. Did it occur to you that Mr. Mazin was trying to protect you against a crook? A. No.

[67] Q. Did you know whether Mr. Mazin was telling you the truth when he said that Mainwald was a crook? A. I don't know.

Q. Did you have any reason to disbelieve Mr. Mazin? A. Sure.

Q. Pardon? A. Yes.

Q. What was the reason? A. The fact that he already had told me that I wouldn't sell any dressed skins in the market.

Q. Were you aware, then, in 1972 this same Mr. Mainwald —

MR. ROSENBERG: Objection, your Honor.

THE COURT: I don't know. Let's hear the rest of the question.

Q. — the same Mr. Mainwald was charged with no less than 100 counts of criminally violating the labor law of the State of New York to deprive workers of wages and wage supplements?

MR. ROSENBERG: Objection, your Honor.

THE COURT: I will permit it.

MR. MARKEWICH: I didn't hear the ruling, your Honor.

THE COURT: I will permit it.

[68] Q. Did you know that? A. I had no idea who he was.

Q. When Mr. Mazin called Mr. Mainwald a crook, were you aware that this matter was compromised by an agreement between the District Attorney of New York County and Mr. Mainwald, requiring Mr. Mainwald to pay \$68,000 in wage supplements?

THE COURT: Sustained. What has that got to do with this case? The disposition of the case has nothing to do with it. Whether he should have checked out the man to see whether he had been charged prior and whether there had been some disposition, fine, the nitty-gritties of it, who cares.

Q. When you heard Mr. Mazin call Mr. Mainwald a crook, were you aware that Mainwald then reneged on the agreement after making two payments on the \$68,000?

MR. ROSENBERG: Objection, your Honor.

MR. JARVIS: Objection, your Honor.

THE COURT: Counselor, are you admitted to this bar?

MR. JARVIS: I am sorry, your Honor, what?

THE COURT: I said are you admitted to this bar?

MR. JARVIS: Oh, yes.

THE COURT: Are you representing a person here?

[69] MR. JARVIS: I represent a company, your Honor.

THE COURT: You represent a witness, is that correct?

MR. JARVIS: In a way I represent a witness and in a way I represent this company.

THE COURT: Do you represent a party to this case?

MR. JARVIS: I represent the company, your Honor, that is involved.

THE COURT: I didn't ask you that. Answer the question I asked. Do you represent a party to this case?

MR. JARVIS: No, I don't.

THE COURT: All right.

MR. ROSENBERG: Your Honor, if petitioner may be heard?

THE COURT: Sure.

MR. ROSENBERG: Mr. Jarvis represents the charging party before the National Labor Relations Board and as such under —

THE COURT: Counselor, I can't hear a word you said. It is one of the things perhaps because of my old age, but while you are seated I just have a terrible lapse of hearing.

[70] MR. ROSENBERG: Mr. Jarvis represents the charging party before the National Labor Relations Board, and under the statute has the right to examine and cross-examine the witnesses, and in fact the only right that he doesn't have is to appeal an order of this Court.

THE COURT: Does he have a right to object, too?

MR. ROSENBERG: Yes, he does, your Honor.

THE COURT: That is interesting.

Overruled.

MR. MARKEWICH: May I inquire whether Mr. Jarvis represents Grozovsky and the United States, also?

MR. JARVIS: I will go on record, I don't.

MR. MARKEWICH: Thank you.

THE COURT: Wait a second. We have a question outstanding.

(Question read.)

A. No.

THE COURT: Tell me, sir, as a businessman, don't you think that you would check out such things to find out the credit of the people that you are dealing with?

THE WITNESS: Perhaps I should, but in this situation all it involved was my assuring myself that the goods would be returned to me and I took

the necessary insurance policies to cover myself on that.

[71] THE COURT: You took the insurance policies at the beginning of your dealings with Mainwald?

THE WITNESS: No, when the goods left my place, effective as of that time and hour, that date.

THE COURT: But this is at the beginning, prior to the time the union was ever involved?

THE WITNESS: I never knew of him. I never had any dealings with him two years, your know, prior. I just met him in two seconds, if that's the time.

THE COURT: No, no, no. Come on, answer my question. Prior to the time that the union ever approached you, you took insurance policies out, is that correct?

THE WITNESS: No, no, no. I am saying I took an insurance — when you asked me if I checked on the record of Mr. Mainwald, I had nothing to check on Mainwald because I never had any dealings with him until that day, May 9, I believe it is, that when he took out the good from my place, at that time I took out an insurance policy effective as of the time he took it out until the goods were returned to my place. Because I didn't know the gentleman.

THE COURT: All right. Prior to that time any goods had never left your place, is that correct?

THE WITNESS: No, never left my place. I was just in business. I just started.

THE COURT: Go ahead.

[72] Q. Were you aware at that time that Mr. Mainwald had run from the State of New York to the State of Pennsylvania and then the State of New Jersey to escape a judgment by Locals 2 and 3?

MR. ROSENBERG: Objection, your Honor. A. No.

THE COURT: It is already answered. I will let it stand. Go ahead.

Q. Were you aware that Mr. Mainwald was charged with mislabeling by the Federal Trade Commission of Furs? A. No.

Q. Were you aware not at the deposition on August 14, but in this courthouse on August 27th, that Mr. Mainwald had just been arrested for forgery?

MR. ROSENBERG: Objection, your Honor.

THE COURT: Yes, I will sustain it.

MR. MARKEWICH: I didn't hear the ruling?

THE COURT: Sustained.

Q. Were you aware that Mr. Mainwald is a forger?

MR. ROSENBERG: Objection.

THE COURT: Sustained.

Q. Would you have put more credence in the statement of Mr. Mazin about Mr. Mainwald if you knew the following: that Milton Mainwald stamped processed fur pelts with a union stamp purportedly belonging to Manhattan Fur

[73] Dressing Company --

MR. ROSENBERG: Objection, your Honor.

Q. -- without authority from Manhattan Fur Dressing Company?

THE COURT: When? The question is when, counsel. The question is when did this supposedly happen?

MR. MARKEWICH: When Mazin on May 12th accused -- stated informatively to Mr. Fabrykant that Mainwald was a crook. Would he have put credence in that statement had he known --

THE COURT: Prior to that time, is that it?

MR. MARKEWICH: Yes.

THE COURT: You have got to put it in.

MR. MARKEWICH: Had he done it prior to that time.

Q. That prior to that date Mr. Mainwald had forged union stamps?

A. I am sorry, please rephrase the question.

Q. You have credited Mazin's statement, would you not, if you had known that to be the fact? A. What fact?

Q. That Mainwald was a forger with union stamps.

MR. ROSENBERG: Objection to the whole question, your Honor.

THE COURT: No, I will permit it.

[74] A. You are asking me if I knew that the man was a forger the way you say it?

Q. Yes. A. Would I have believed what Mr. Mazin was telling me in this location?

Q. Right. A. Sure, if I would know for myself, I don't need his opinion.

Q. After May 12th was there any other incident of fisticuffs in front of your place of business? A. Of what?

Q. Of fisticuffs in front of your place of business.

THE COURT: Hold on. Don't say "fisticuffs." It is obvious that the — a fight.

THE WITNESS: No.

Q. Do you know the date of the petition for this injunction?

A. I don't recall.

MR. MARKEWICH: Your Honor, may the record show that between May 12 and July —

THE COURT: It is the 16th of July, that is the date that I signed it, the date of the petition itself should be the 16th, but I don't know, maybe it didn't come in that day. Would you believe it is blank? We will have to

[75] assume it is the 16th.

Q. Did you make any written complaint in the Criminal Court about the incident of May 12? A. No.

Q. Do you know what the disposition was of the criminal complaints that were made?

MR. ROSENBERG: Objection, your Honor, it is irrelevant.

THE COURT: I will let him answer it. Go ahead.

A. No.

Q. Are you aware that there were cross complaints both by union people and by Mainwald's people? A. I don't know.

Q. Did Mr. Foner or Mr. Catani or Mr. Sobin ever tell you that their unions were having a labor dispute with Southern Skin Trading Corporation — Company?

THE COURT: Traders Corporation.

Q. Traders Corporation. A. No.

Q. Do you know of the existence of any labor dispute between these unions and Southern Skin Traders Corporation?

MR. ROSENBERG: Objection, your Honor, it calls for a conclusion.

THE COURT: I will permit it.

[76] Q. Do you? A. Do I know? I don't know. I don't know.

MR. MARKEWICH: No further questions.

Your Honor, I am sorry, before I close, I would like the board to produce any affidavits that it has received from this witness.

THE COURT: I would assume, counselor, maybe I am wrong, but I would assume that those are the documents attached.

MR. ROSENBERG: No, your Honor, we have additional affidavits.

THE COURT: You have extras? Is this the first time you have seen them?

MR. MARKEWICH: Yes, they wouldn't let you see an affidavit until after the examination of a witness. That is a board rule, Judge.

THE COURT: Yes.

MR. MARKEWICH: Your Honor, may I inquire respectfully whether I may see the original version of the letters?

THE COURT: I haven't had a chance to read them.

MR. MARKEWICH: All right.

THE COURT: Besides that, I don't know who translated them.

[77] MR. MARKEWICH: May I have a moment, your Honor, to read these?

THE COURT: All right. How about your co-counsel, have you ever seen them?

MR. CAMMER: Your Honor said they didn't have to show them after he was examined. We applied to see them. We made a motion pretrial.

THE COURT: All right.

What else do we have? How many more witnesses are you going to have?

MR. CAMMER: I want to cross-examine this witness, your Honor.

MR. ROSENBERG: Your Honor, petitioner doesn't intend to call any more witnesses.

MR. MARKEWICH: May we have a five-minute recess, your Honor?

THE COURT: Sure.

MR. MARKEWICH: Thank you.

(Witness excused.)

THE COURT: Before we take the five-minute recess, does anyone intend to recall the first witness?

MR. ROSENBERG: Mr. Hecht?

THE COURT: Yes.

[78] MR. CAMMER: No, but we can get him down if your Honor thinks it is necessary. We will try to get him down.

THE COURT: I don't know. I just want to know whether counsel intend to recall him.

MR. ROSENBERG: The petitioner has no intention, your Honor.

MR. CAMMER: Except to enlighten the Court if the Court thinks it is necessary.

(Recess.)

THE COURT: Court Exhibit 1 for identification is a letter in Spanish, apparently a Xerox copy of a copy of a letter and it starts off "Dear Senor Leonard."

Attached to it there is a document marked "Original," which is a translation of the Spanish. Attached to the two documents is a third document which is the letter proposed by the Government to be turned over.

MR. ROSENBERG: Your Honor, may I ask the date on that letter?

THE COURT: Sure, May 9, 1975.

MR. ROSENBERG: Thank you.

THE COURT: The first of the series.

From the third document there has been excised five lines. I see absolutely no reason to keep the five lines hidden. The entire document will be turned over to the defendants.

[79] MR. MARKEWICH: Thank you. May I take it?

THE COURT: Sure.

(Court Exhibit 1 marked.)

THE COURT: Court Exhibit 2 for identification is a letter dated the 23rd of May 1975, again addressed "Dear Leonard." The first document is a copy of the letter in Spanish.

The second document marked "Original," is a translation of the Spanish letter into English.

The third document is a copy of the English translation with certain lines excised.

On the first page of the third document it has three lines excised, and the first line and a half of the second page. I tend to agree that the first

three lines on the first page are nobody's business. I am quite sure that counsel for the union has no intention of discussing anybody's marriage.

Is that correct, counsel?

MR. MARKEWICH: Marriage? Oh, no, your Honor.

THE COURT: It has nothing to do with this case.

MR. MARKEWICH: The only marriage I am concerned with is the marriage between Southern American and Grozovsky.

[80] THE COURT: How about a marriage between yourself and your wife?

MR. MARKEWICH: I will be glad to discuss that at that time.

THE COURT: You better be concerned about that.

Court Exhibit 2 for identification is turned over to the defense.

(Court Exhibit 2 marked.)

THE COURT: Court Exhibit 3 for identification is a letter dated the 19th of June, 1975. On the top is a copy apparently of the original Spanish letter. Immediately thereunder marked "original" is a translation of the Spanish into English.

The third document is an excised copy of the translation which the Government has tendered to be turned over to the defense. There are eight lines excised from the last paragraph of the third page.

While I might agree that the last three lines excised from the second page dealing with wallpaper to be purchased at Schumacher's has nothing to do with this case, I can't see how it would hurt turning the matter over.

The rest of the document — counsel, you are not going into wallpaper, are you?

MR. MARKEWICH: No.

THE COURT: That is what I thought.

MR. MARKEWICH: No objection.

THE COURT: Court Exhibit 3 for identification in its entirety is turned over to the defense.

(Court Exhibit 3 marked.)

THE COURT: Court Exhibit 4 is a letter dated July 15, 1975. There is a copy of the letter in Spanish. Under that there is a copy of the letter as translated into English.

I don't find anything excised from the letter. Under the circumstances Court Exhibit 4 will be turned over to the defense in its entirety.

(Court Exhibit 4 marked.)

PHILIP FABRYKANT resumes.

BY MR. MARKEWICH:

Q. What was the date you delivered 3500 skins to Mainwald?

A. How many, 3500 skins?

Q. Yes. A. I believe it was May 9.

Q. When did you get them back? A. When did I get them back?

May - July - I don't recall. I believe it is July 6. I am not sure. I have
[82] to check. I think it was July 6th. I am not sure.

Q. When did he say they were ready? A. When did he say they were ready? Before - some time before July 6th.

Q. Will you tell the Court what your arrangement with Grozovsky and Southern Skin Traders is regarding payment for skins?

MR. CAMMER: Your Honor, I object to the question and to any further questions about Grozovsky. The witness has testified that there has been no complaint made or the man made that he should stop doing business with Grozovsky. He is not in this case in any shape, manner or form, and whatever his relations with Grozovsky may be is irrelevant and immaterial.

MR. MARKEWICH: Your Honor, in view of my brother's objection to my question, I will withdraw it.

THE COURT: No, why don't you just amend it to delete Mr. Gro-

zovsky or however you pronounce that name. Your question was dual. One, what the arrangements were with Grozovsky, and I thought that was what he was going to object to, and the other one, what arrangements were made with Southern Skins.

Do you want to object to both?

[83] MR. CAMMER: Your Honor, may I say it is understood, and I am sure there is no question about this, that Southern Skins has been treated by all concerned as a Grozovsky corporation.

THE COURT: All right. Counsel's offer to withdraw the question is permitted.

Go ahead.

Q. Let me reframe the question, Mr. Fabrykant.

Do you pay in full for skins that you order from Grozovsky?

A. Yes, I do.

Q. Do you pay in full initially? A. No, I don't.

MR. CAMMER: Same objection, your Honor. I don't think his relations with Grozovsky are at all material to this case.

THE COURT: I think you guys better get together on strategy.

Do you understand why counsel is objecting to this?

MR. MARKEWICH: Yes, your Honor. I understand. I do believe that I should defer to his wishes. Therefore, I will withdraw the question and cease this line of questioning.

[84] THE COURT: Fine. Okay.

MR. MARKEWICH: No further questions, your Honor.

THE COURT: Wait a second, counselor, don't go away. Pick up those letters.

MR. CAMMER: My objection runs to those letters as well.

THE COURT: You haven't seen them?

MR. CAMMER: I saw one. I don't care what they say. I haven't the slightest interest in Grozovosky or Southern Skin.

THE COURT: Beautiful. Don't worry about it. If he wants to see it, he can.

Counsel, why don't you stay up here so you can hear.

Mr. Cammer?

MR. CAMMER: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. CAMMER:

Q. Mr. Fabrykant, you didn't file any charges against FLM joint board?
Withdrawn.

Mr. Foner, to your knowledge, is president of the FLM joint board, is he not? A. Yes.

[85] Q. When he came to see you, he introduced himself as the president of the FLM joint board? A. Correct.

Q. And he came by prearrangement? A. Correct.

Q. He phoned you and asked whether he could see you, and you said yes, he could come? A. Yes.

Q. When you filed charges on May 9th or May 10th, you didn't include the FLM joint board in your charges, did you? A. I am not sure.

MR. CAMMER: I will ask the board to stipulate that the charges didn't run to the FLM joint board. The charges speak for themselves, they are before the Court anyway.

MR. ROSENBERG: I would stipulate that the May 13th charge specifically runs to Local 2F and 3F, and to the joint board.

THE COURT: He is asking about the May 1st, and the May 1st, I think we will all agree, didn't include the joint board.

Go ahead.

[86] Q. When you filed those charges on May 13th or whenever, May 10, 12, 13, you had had your two conversations with Mr. Foner, had you not? A. Correct.

Q. Did you have any conversations with Mr. Foner between the time you first filed the charges and some date in June when you did file charges against the FLM?

MR. ROSENBERG: Objection, he misstates the date he filed the charges against the FLM. I believe it was July 10th.

MR. CAMMER: July 10th. So much the better.

A. The answer, I believe, is no.

Q. You had no conversation? A. Well, just -- my last conversation with Mr. Foner was on or about May 5th or 7th, as I recall, and that was the last of our conversations.

Q. On May 13th you filed charges against Local 2 and 3. Then you had no conversations with Mr. Foner? A. Not that I recall.

Q. And then on July 10th you filed charges against Mr. Foner's union, is that correct? A. If that is what the charge reads. I am not familiar exactly the way it reads.

Q. What caused you to file charges against the FLM, in the charge of July 10th?

[87] MR. ROSENBERG: Objection.

THE COURT: Yes, as a matter of form the question is bad.

MR. CAMMER: I will withdraw the question.

THE COURT: You can't skin the same cat a different way.

MR. CAMMER: I am going to try to skin the cat later, your Honor.

THE COURT: Okay.

Q. The only conversation with any representatives of the FLM joint board that you had were two conversations with Mr. Foner and one

conversation with Mr. Mantaugh, is that correct? A. Correct.

Q. And during these conversations was Mr. Foner civil and courteous, gentlemanly? A. Always.

Q. No threats were made except when he told you he was going to picket you? A. Correct.

Q. Apart from that, there were no threats made of damage to you or to your skins? A. Never by Mr. Foner.

Q. Nothing like that.

[88] Q. During these conversations did Mr. Foner ever ask you from whom you bought your skins? A. I don't recall.

Q. Did he ever ask you to whom you sold your skins? A. No.

Q. Did he ever mention Southern Skins or Grozovsky? A. Oh, yes, the name must have been mentioned -- was mentioned.

Q. Did he ever mention Mirode or Mainwald? A. No.

Q. And during your conversations with Mr. Mantaugh, as I understand it, you offered to employ a member of the FLM joint board to sign a union contract in order to avoid the picketing, is that correct? A. I said that I would study the situation. I didn't say I am ready to sign, but I said I would study the situation.

Q. You were willing to consider that? A. Yes, he came. He offered me dollars and cents what the whole layout would be.

Q. Then you were told that that wouldn't solve the problem of the dressed skins coming in, they would still picket you even if you signed the contract, is that correct? A. I don't know if it was mentioned in those exact words, but it was mentioned that that wouldn't be the answer to our problems.

[89]

Q. That was not the problem they were talking about? A. Meaning a worker? That wasn't the problem.

Q. Now, I want to direct your attention to the charge which you finally did file against Mr. Foner on July 10th, that is, Mr. Foner, Jr.

You say in this charge that since on or about May 8th Mr. Foner's union caused strikes or work stoppages to occur in your premises, is that true? A. I was guided by the Labor Board.

Q. No, I am not trying to fault you. I wanted to know whether it is true. A. Yes, I signed it.

Q. I know you were guided by the board. A. May 13, is that correct?

Q. Yes. A. Yes, I signed it.

Q. Was that statement true? A. Was it true?

Q. Yes. A. Within the Labor Board's laws, I don't know if it is true or false. I mean, I am not -

[90] Q. To your own knowledge, forget the Labor Board, I am asking you about your own knowledge, was that statement true? A. Not really.

Q. No.

You say that Mr. Foner's union caused workers to refuse in the course of their employment to handle goods or to perform services for South American; was that statement true? A. My workers?

Q. Workers, any workers. A. It's true.

Q. When and where did they cause any workers to refuse to handle your goods? A. You can call a certain trucking company and they will tell you because they have it written down.

Q. What trucking company? A. Calderon.

Q. When did this happen? A. I don't recall the date, but I can look it up for you.

Q. Who approached them? A. Mr. - I don't know his name. I can describe him, but I can't - I don't know his name.

Q. Did Mr. Foner call up this company? A. No. Excuse me?

[91] Q. Did Mr. Foner do that? A. No, I didn't say Mr. Foner. I don't recall the gentleman's name, although I can describe him.

Q. Do you know — A. He is still there in front of my store, if you check him.

Q. Do you know if it was anyone connected with the FLM joint board? A. To my best knowledge, for the past three months, he is associated with the union.

Q. What union? A. With the union that is picketing, either Local 2F or 3F or the joint board, I don't know.

Q. Do you know who this person is? A. Sure. I don't know by name.

Q. Did you ever talk to this person? A. Once. When he followed me.

Q. When? A. In front of a policeman.

Q. Who? A. When this gentleman followed me and I had to seek police assistance.

Q. How long ago did this happen? A. I can get the exact date for you. If you would like an idea, I will give you. I would say later — [92] the late part of July or early August, but I can confirm it.

Q. Do you know what organization this person works for, what he does? A. I wish you would ask him. He is in front of my store for the past three and a half months.

Q. Did you ever tell this to the Labor Board? A. No, I didn't think it was important until you just brought it up.

Q. What did this person tell you? A. He told the truckman not to make any deliveries, as the truckman related it to me.

Q. You mean the truckman told you that somebody whom you don't know — A. This gentleman, by mentioning this gentleman, by describing

him, told me that I shouldn't come in. And his words were something to the effect, "I asked him if he was on strike, and they said no, so I proceeded to come in."

Q. Apart from this incident, was there any other time when Mr. Foner or anyone from the FLM joint board told anyone to refuse to work on your skins? A. No.

[93] Q. Did any people who bought from you, any fur manufacturers, who bought from you, did any of their workers refuse to work on the skins?

A. Not that I know of.

Q. Did Mr. Foner tell you that there was no objection whatever to our importing all the raw skins that you wanted to? A. No objection.

Q. As a matter of fact, didn't you say that you would be very happy to get raw skins to import? A. I said I wish I could and to this day I support that.

Q. That is the truth, that you would like to get raw skins imported, isn't it? A. Yes, I would like.

Q. Isn't it a fact that skins that are dressed and dyed in Argentina are inferior in quality to those that are dressed and dyed in this country?

A. Correct.

Q. Are there complaints from the fur manufacturers about the quality of the Argentina dressed and dyed product? A. You misunderstand. You are misusing the word "complaint." It is not a complaint.

Q. Was there dissatisfaction? A. It could be slightly improved.

[94] Q. In what way could it be improved? A. As I described by the process of some kind of drumming or fluffing. I am not the expert. But by whatever process Mr. Mainwald did, they were satisfactory.

As I described in my previous testimony.

Q. As a matter of fact, you do import raw skins from Argentina?

A. To some degree, yes.

Q. When you import them, you don't have them dressed or dyed, do you? A. Up to now, no.

Q. You sell them to the fur —

THE COURT: Wait. I am afraid the record is going to reflect that you asked half a question and he answered a full one.

When you import raw skins from Argentina, you don't have them dressed is what you said?

MR. CAMMER: Dressed or dyed, your Honor.

THE COURT: In Argentina, is that what you meant?

MR. CAMMER: Then I surely misspoke myself.

THE COURT: Well —

Q. When you import raw skins, you don't have anything to do with dressing or dyeing them, do you? A. Up until now, no. But it is a

[95]

consideration.

Q. Now you sell the raw skin to the fur manufacturer and he arranges to get them dressed or dyed to meet his requirements, does he not?

A. Correct.

Q. Or you might sell them to another dealer? A. Correct.

Q. Who would get them dressed or dyed to meet the requirements of his customers? A. Correct.

Q. And you haven't given out any raw skins to be dressed or dyed to anyone? A. To anyone, right.

Q. When the skins come in from Argentina, when the raw skins come in from Argentina, are they marked in any way to indicate the country of origin? A. No, there is no law.

Q. There is, I am sure you know, a Fur Labeling Act? A. Yes.

Q. Which requires the garment to be marked to indicate the country of origin and the type of skin, is that correct? A. Correct.

[96] Q. When the skin comes in, do you contribute in any way to the process of identifying that skin when you sell it to your customer, either as to the kind of the skin it is, lamb or fox or whatever — A. Yes.

Q. — or that it comes from Argentina? A. By law I have to.

Q. What do you do? A. On the bill, on the invoice, I state country of origin.

Q. And the kind of skin? A. And the kind of skin.

Q. But nothing is put on to the skin to indicate the country of origin or the kind of skin it is, is that true? A. No, it is not quite true. In my specific case the dressed skins I have are marked "Made in Argentina."

Q. I was asking about raw. A. I am sorry, raw has no markings on the skin.

Q. When the dressed skin comes in, it does have a label in Portuguese or in English. A. In Spanish.

Q. Spanish. Okay. And the label is Industria Argentina? A. Correct.

[97] Q. What does Industria mean? A. Industry. I believe it comes from Latin.

Q. When these dressed skins came in, where did Mainwald come into the picture? What was Mainwald's role with regard to dressed skins?

A. He reprocessed this, what you called inferior or not comparable dressed skins or semi-finished skins, whichever — it is a technicality and I am not the one to relate it.

Q. What did his reprocessing consist of? A. To the best of my knowledge, like I mentioned before, some kind of a drumming process, some kind of a fluffing process or whatever he did, which is satisfactory to my price and to the appearance of the skin.

Q. It is a fact, is it not, that your agreement with Mainwald requires you to pay him 25 cents a skin for each skin that he reprocesses?

A. That's correct.

Q. And you don't know exactly what he does? A. I don't care what he does.

Q. And you don't care what he does? A. That's technical.

Q. And then he puts on a Teamster's union label, isn't that so?

[98] A. Yes, I think it's the Teamsters.

Q. For that 25 cents?

MR. ROSENBERG: Objection. The question is ambiguous.

THE COURT: No, I think it is already answered.

Q. Mr. Fabrykant, fur garment manufacturers are your only customers, are they not? A. No.

Q. Excuse me, and also fur dealers? A. Competitors, if you wish to call them, yes.

Q. So that fur dealers and fur garment manufacturers are your only customers, you don't sell to the public, to people passing by on the street, do you? A. No, no retail business, if that is what you mean.

Q. And it is a fact, I take it, that almost all of the fur garment manufacturers in the United States are located in the fur market in the thirties, West Thirties, is that true? A. Correct.

Q. And also almost all of the fur dealers who service the fur manufacturers are located there, is that true? A. That's true.

Q. The signs in front of your place, are they true? A. Excuse me?

[99] Q. Is the information which is contained on the signs truthful, on the picket signs? Is there anything on those signs that you say is not true?

MR. ROSENBERG: Your Honor, I might ask that the witness be shown the text of the signs before he answers.

THE COURT: Sure. Absolutely.

Q. To refresh your recollection, look at these. A. Thank you.
No, it is not true.

Q. Pardon? A. It is not true.

The fact — the first two lines "Please save our jobs. Don't buy Argentina dressed fur skins."

Q. That isn't true? A. To my knowledge or to my point of view.

Q. You don't know whether it is true or not, do you? A. Well, to my point of view, this is not so. This could be completely the opposite according to me. It could create jobs, if I am asking for my opinion.

Q. Well, Mr. Fabrykant, do you know whether before Argentina imposed this embargo these skins were dressed and dyed in New York?

[100] MR. ROSENBERG: Objection, your Honor. It is going far afield.

THE COURT: I am not sure that the question is properly phrased. Let's break it down.

Is there an agreement between all parties, that the Argentine law presently requires that 80 per cent of the fur shipped out of the country be dressed in Argentina? Yes or no.

MR. CAMMER: I move to amend my answer. It says 90 per cent and I would like permission to correct it to 80 per cent.

THE COURT: Absolutely. Does anybody know when this law came into effect?

MR. MARKEWICH: 1970.

MR. CAMMER: 1973, your Honor.

THE COURT: All right.

MR. ROSENBERG: We don't know the exact date, your Honor. It is in effect now.

THE COURT: At this point I don't know, either. Prior to 1970.

MR. CAMMER: Your Honor, we have a manufacturer here and he does know and he can testify to it.

[101] THE COURT: I am not worried about it. Prior to 1973, skins imported from Argentina, do you know whether they were dressed in Argentina or here?

THE WITNESS: Here and all over the world.

THE COURT: Okay.

MR. CAMMER: That is all I have, your Honor.

THE COURT: Counselor, do you have anything else?

MR. MARKEWICH: No, your Honor. No further questions.

MR. ROSENBERG: Your Honor, may I have one minute?

THE COURT: Sure.

(Pause.)

MR. MARKEWICH: Just one question I would like to ask, your Honor.

THE COURT: It is your last chance. Go ahead.

BY MR. MARKEWICH:

Q. Have you ever given any raw skins to Mainwald for processing?

A. No.

Q. Are Mainwald's workers capable of processing raw skins?

MR. ROSENBERG: Objection.

[102] THE COURT: Sustained. How would he know? He never gave them raw skins.

Q. Isn't it a fact, Mr. Fabrykant, that you deliver skins to Mainwald simply to get the Teamster's label affixed to them?

MR. ROSENBERG: Objection.

THE COURT: Sustained. We have been through it.

Any redirect?

MR. ROSENBERG: No questions, your Honor.

THE COURT: You made a mistake. You are restricted now to two questions.

MR. ROSENBERG: I hope to stay within those two questions. To other areas, if I may correct myself.

REDIRECT EXAMINATION

BY MR. ROSENBERG:

Q. Mr. Fabrykant, will you please explain why the name Grozovsky SAC appears in the window of your store?

MR. CAMMER: Objection, your Honor.

THE COURT: Sure. Sustained.

MR. ROSENBERG: I give you back the second question, your Honor.

THE COURT: Thanks. Step down.

(Witness excused.)

[103] THE COURT: Does the Board have any other witnesses?

MR. ROSENBERG: No further witnesses, your Honor.

THE COURT: How about the joint board? I guess in ordinary course you may not be the first ones to go. Do you have any witnesses?

MR. CAMMER: I do, your Honor, but I would like to be heard on a motion to dismiss before I get into that.

THE COURT: Sure.

MR. CAMMER: May it please the Court, the FLM joint board moves to dismiss the petition on the grounds that it is insufficient, on the ground that the evidence adduced in support of it is insufficient as a matter of law.

I would just like to start, your Honor, by saying that one of the first things that I learned at law school was that you don't tell the Judge he doesn't have the power to do something, because you tell it to a Judge, his hackles rise and by God he is going to show you that he does have the power to do it.

Despite that bit of ancient wisdom, I want to start on the jurisdictional point.

There are two aspects to this case, your Honor. First -three, perhaps - Southern Skins, Mirode, violence, the incident of violence. I would like to

[104] deal with them in reverse order, with your Honor's permission.

THE COURT: Sure.

MR. CAMMER: We are in the Federal Court and we are not in a local police court. The question before your Honor on the violence is whether we are dealing with a Federal case.

And subsidiary to that is whether this District Court has jurisdiction to deal with that.

Now, we are assuming, although I don't concede for the FLM board, but it hasn't been contested here. It has been assumed that there was — it was assumed *arguendo* — that there was violence against the charging party. The question we have to find out, then, is whether that is the kind of violence which concerns the Federal Government, and if it concerns the Federal Government, does a Federal District Court have jurisdiction to deal with it.

Now, the National Labor Relations Act proscribes in Section 8(b)(1)(A) restraint and coercion by unions, and restraint and coercion means violence, includes violence. However, 8(b)(1)(a) restrains the use of violence against employees in the exercise of their rights guaranteed by Section 7, and that means that violence may not be used against employees who cross picket lines, who choose not to be engaged in union activity.

[105] It is not the general restraint against the kind of petty small violence that occurs on the picket line every day, and that the State Courts are required to deal with.

Even if this were that kind of violence, we come now to the jurisdiction of this Court, and I want to preface here, too, by saying that when it comes to labor injunctions, I think it is generally recognized that the history and record of the Federal Courts, the Federal District Courts, is not a novel one and that led in 1932 to the enactment of the Norris-Laguardia Act.

THE COURT: That was the year before I was born.

Go ahead.

MR. CAMMER: That was the year I got out of law school.

THE COURT: I just wanted to let you know I was not taking it personally.

MR. CAMMER: That took away from the District Courts power to issue injunctions in labor disputes, as you know.

THE COURT: You also get Colonial Sand & Gravel and Boys Market.

[106] MR. CAMMER: We don't have Boys Market here because we are not talking here about a contract not to engage in a strike, which is what Boys Market is all about.

But what I am trying to say, your Honor, is that so far as the National Labor Relations Act is concerned the District Courts have no jurisdiction to deal with unfair labor practices except those that are given to the District Court by Section 10(k) and 10(1). Apart from that, Meyers vs. Bethlehem says that the correction of unfair labor practices is purely for the National Labor Relations Board and for the Courts of Appeal, and the District Courts have no function in anything having to do with unfair labor practices except those that are dealt with in Section 10(k) and 10(1).

And here we have a section 10(1) case.

We have here a case of alleged illegal secondary activity. And the beginning and end of this case is the charge that was filed. And the charge was filed in terms of the language and in terms of the essential ingredients to make out a case of secondary boycott.

And the charge, the witness has testified, while it is in the boilerplate of Section 8(b)(4)(a), doesn't have to support any of the facts which Section 8(b)(4)(1) talks about.

[107] Section 8(b)(4)(a), which is the only thing we have before us here, has to do with whether this is a secondary strike, secondary boycott or secondary picketing. There is no strike. There is no boycott. We have to do with whether or not this is secondary picketing.

Secondary picketing arises when we picket B because we are made at A.

It doesn't arise when we picket B because we are mad at B. And here we haven't any controversy with A. They say that we have an imagined controversy or imagined dispute against some company in Argentina. We don't have any dispute against any company in Argentina. We couldn't care less about what happens in Argentina. Our dispute is with South American because South American is selling a product that we deem injurious to our members.

Our picketing of South American, your Honor, is no different than the picketing by parents of a store that sells drugs to children. They picket a store because that store is selling a product which is injurious to people with whom they are concerned. Our picketing is no different than when the American Legion pickets a movie house because they are showing movie pictures with Jane Fonda in them.

[108] We are picketing here because — no different — we are picketing here because this company is selling a product which is taking away work from our members. We don't care if this company does business with South American, we don't care if they import raw skins. We are picketing to get work for ourselves.

Now, there are two cases — I discussed them, I don't know whether your Honor had a chance to read —

THE COURT: Yes.

MR. CAMMER: Then you know the work preservation picketing. We are not picketing this fellow to make Southern Skins do anything. We are picketing to get the work for ourselves and I think that this case, our case, is a fortiori to the door, to prefabricated door case, because there they refused to handle the door. There they engaged in the strike or stoppage. We aren't

engaging in any strike or stoppage. We are simply going out to tell prospective buyers that this man handles work which is taking away jobs from American workers.

Now, our picketing is truthful. Apart from the violence in which we were in no way involved, our picketing is informational, entirely informational. It hasn't resulted in any of the evils, the secondary evils, that 8(b)(4)(1) is concerned with, refusals to handle, refusals to make deliveries, refusals of employees of buyers to buy.

[109] So then we come into Tree Fruits. If this were a secondary situation, the Tree Fruits cases we have the right to publicize by picketing that these products are made in a foreign country and at the price of taking away jobs from American workers.

Now, the board in their brief and in their argument, as I understand it, comes in with what I consider to be pure nonsense about the fact that this picketing is not directed at retail customers, retail consumers. They pretend to see — I don't know whether they get the idea — they pretend to see some difference between picketing the customers of a retail store and picketing the customers of a wholesalers. What is wrong with that?

In the first place there is nothing in the law that says that.

But more than that, the statute itself, the proviso of the statute says that nothing in this statute shall bar publicity to the public, including consumers and members of labor unions.

So that clearly we have the right to publicize the foreign origins of these skins to the public. That means at the point of impact, at the point where the fur manufacturers go in to buy. That is the point, the time when it is essential for them to know that they are buying skins that are made in

[110] Argentina.

Apart from that, there is the whole question of deception here, potential deception, alerting people. The fur industry, the first witness testified, is very,

very sick. It is dying. Thousands of workers have lost their jobs and hundreds of shops have closed down because of imports. Those who are surviving in the industry have gotten together — your Honor threw a terrible scare into Mr. Hecht and I think, with all respect, unnecessarily and unjustifiably because there is nothing wrong with the members of an industry banding together to promote their product and to encourage —

THE COURT: I didn't say there was.

MR. CAMMER: He got the idea that they are engaged or potentially engaged in some antitrust situation. This thing was very carefully considered.

Nevertheless, people want to know about this and people should have the right to know, especially when this fellow, when South American gets himself involved in a deal with Mainwald to put a phony union label on for a quarter a skin —

THE COURT: Is this a motion to dismiss at the end of the Government's case?

MR. CAMMER: Yes, sir.

[111]

THE COURT: If so, you are getting into a summation.

Remember, at this point everything that they have proved is proved. If you want to sum up, I assume that you have already rested, which I don't believe you want to.

MR. CAMMER: I don't think so. I don't think what has been proved, your Honor — nothing has been proved about a controversy with any secondary employer except Mirode. If I can deal with that, Mirode, there is evidence here that there was an effort made to dissuade South American from dealing with Mirode.

First of all, that has nothing to do with the FLM I have to say in justice to my own client.

Going beyond that the Mirode thing, your Honor, is a fortuitous accidental intervention into what started purely and simply as an effort to promote

the "Buy American" campaign. Mirode came along shortly after this happened, the picketing, the conversations with Foner, the rest of it, Mirode came in later and apparently there is a controversy between Mirode and Locals 2 and 3.

They have judgments against them for unpaid wages and things of that kind. And they got mad and whatever.

[112] On that, your Honor, it is now before the Court, not in the testimony but in the pleadings, that Local 2 and 3 has entered into a cease and desist in the Newark office of the board where we have agreed that they will not do anything to interfere with Mirode's business. They won't picket and whatever.

Your Honor, there is no necessity for an injunction in view of that circumstance. The board is able to enter an order in the Court of Appeals to enforce that settlement stipulation and if Locals 2 and 3 should violate that, they will be subject to contempt and whatever.

Only a week or two ago I read in the Times, in the Grove Press case, that your Honor denied an injunction, he took the assurance of the CIA that they wouldn't destroy any documents. The Government has the assurance and legally enforceable form from Locals 2 and 3 in the form of a stipulation that they are going to leave Mirode alone.

I don't think an injunction is necessary for that.

We have to resist an injunction, your Honor, because literally the survival of the fur industry is very, very much at stake, and any decision here is going to be critical to us. Hundreds of jobs have been lost because of this and if no injunction is issued, we have a chance, a chance, and we want to get that chance, of having the Argentina Government lift that embargo and let the skins
[113] come in and let us work on them.

They can send their skins wherever they want, but we should have the opportunity to persuade the Government to lift the embargo and let all skins

come in and let trade and commerce continue in the free and normal way it has for decades before this embargo was placed, and if any injunction issues here, they are encouraged to keep this embargo going.

So I think, your Honor, I hope, I really hope that your Honor will give very serious consideration to our position here because it is not him. There is a tremendous amount riding on this case, and there we are.

I want a chance to argue on the basis of all the testimony.

Thank you very much.

THE COURT: Mr. Markewich?

MR. MARKEWICH: Just a few words, your Honor. There is no disagreement between Mr. Cammer and myself as to the Court's jurisdiction with respect to the acts of alleged violence or even the presence of violence in a dispute such as this.

I took a practical position because I wanted that out of the case. We weren't dealing with the past. This isn't a damage case, it is not a criminal
[114] case. It is an equity case dealing with the future behavior. And in order to reduce this case down to the real essential, we are willing to -- I stated the willingness of our unions --

THE COURT: I know what was going on.

MR. MARKEWICH: So that really doesn't mean that I believe that the Court had the jurisdiction to enter this kind of an injunction in the first place, but it was a practical solution.

THE COURT: I understand.

MR. MARKEWICH: Your Honor, there is an aspect to this case which has been testified in the memorandum of law which I would like to again underscore, that to a very significant extent what the NLRB is asking this Court to do is really to enforce an Argentina law, and when you come right down to it, the whole argument of the board, which is footed upon the Dow

Chemical distinction from the Tree Fruits case, is that here, as in Dow, there is a substantial proportion of the charging party's business which is being picketed and that the product constitutes so much of the business of the charging party that Tree Fruits is distinguishable, because we are not dealing with just a few Washington apples in a Safeway store. But I suggest, your Honor, that this is not by force of any economic activity — this isn't a play of the economic market.

[115]

The reason that there is a substantial preponderance of dressed skins to which our picketing is directed is the fault of only one agency, and that is the Argentina Government. Without that, your Honor, the board would have no Dow Chemical case to rest upon. That is the only reason that the dressed skins are 4:1 in this man's shop, is because of the Argentina Government.

Then they have the temerity to come to this Court and say that they want this Court, this United States Court, to in effect enforce an Argentine law. And say that is turning our labor laws on its head — on their head.

Your Honor, Dow Chemical, which is the mainstay of the board's position, involved, as Mr. Cammer pointed out, a labor dispute with the Dow Chemical Company and the unions.

The steelworkers were picketing the five retail stations because of their dispute with the Dow Chemical Company, a real labor dispute.

Your Honor, I ask you to view this case in this fashion: If there were no labor dispute between the steelworkers and the Dow Chemical Company about bay gasoline, but they took a political position that they were going to picket every gas station with signs that said, "Don't buy Arab oil, don't

[116] buy oil from the Mid-East, don't swell the Mid-East with petrodollars," then you would have this case, your Honor.

THE COURT: Okay. Mr. Rosenberg? Do you want to be heard?

MR. ROSENBERG: Your Honor —

THE COURT: One question, where is the labor dispute?

MR. ROSENBERG: Where is the labor dispute?

THE COURT: Yes.

MR. ROSENBERG: Your Honor, if I can change the emphasis of your question —

THE COURT: No, answer the question.

MR. ROSENBERG: The dispute is to have Fabrykant cease doing business and handling the goods which are sold to him by Southern Skin down in Argentina. The Act doesn't require that we have a primary labor dispute, it only requires that we have action on the part of the labor organizations whether they are an object of their conduct, to have Mr. Fabrykant of South American Skin cease doing business with Southern Skin or with Mirode or any other person engaged in commerce.

THE COURT: Go ahead. That's it? All right. Call your first witness. Do you want to take 10 minutes?

[117] MR. CAMMER: We are ready if your Honor is ready.

THE COURT: I will be back in five minutes. I want to make a phone call.

(Recess.)

HENRY FONER,

called as a witness, having been first duly sworn, was examined and testified as follows:

THE COURT: For the purpose of the record, the motions made by defense counsel, the decision is reserved in both.

Go ahead, please.

DIRECT EXAMINATION

BY MR. CAMMER:

Q. Mr. Foner, are you connected or associated with the respondent, FLM Joint Board? A. I am.

Q. What position do you hold? A. President.

Q. What is the FLM Joint Board? A. The FLM Joint Board is a union made up of division in the fur, leather and machine industries.

Q. Addressing yourself to the fur industry, what aspect of the fur industry is the joint board composed of? A. In the fur dressing and dyeing section of the fur industry, we have a fur dressers and dyers division.

[118] Q. How many members do you have in that? A. That would be approximately 500 active members in that division.

Q. Is that a level membership or does that represent an increase or decrease? A. That represents the end of a process of decrease, which has taken place over the last, I would say, since 1947, 1948, from a high of about 10,000.

Q. Are you aware that the Argentina Government imposed an embargo against the export of raw skins from that country? A. I am.

Q. Do you know of your knowledge when that embargo was imposed? A. Yes, that was imposed in 1973.

Q. Do you know when in 1973? A. I believe in the summer of 1973.

Q. Prior to the imposition of the embargo, were skins imported from South America? A. Yes, they were.

Q. What kind of skins? A. The ones that we were primarily concerned with were the South American lamb skins, the broadtail lamb skins.

[119] Q. Were other skins exported from Argentina? A. I believe they were not processed under our jurisdiction.

Q. Under whose jurisdiction were they processed? A. Under the jurisdiction of Local 2F and 3F.

Q. What skins did they handle? A. I believe there were foxes - that is the one I am most familiar with.

Q. What was the principal point of export of these skins from South America? A. Argentina.

Q. Did they come in from other countries as well? A. I know of none that came in from other countries.

Q. How did they come in, dressed or raw? A. They came in raw.

Q. Who did the work on the lamb skins? A. Members of our union.

Q. Can you name any shops which were doing raw skins up until the time of the embargo, the Argentina skins? A. There were two processing firms up to the time of the embargo. One was called the Herman Bash Company and the other was Crown Monarch.

Q. What happened to the Bash Company? A. It has since gone out of business.

[120] Q. How many workers did they employ? A. About 350 workers.

Q. On the dressing and dyeing of lamb skins? A. On the dressing and dyeing. I am familiar particularly with the dressing and dyeing of the lamb skins.

Q. What happened to the Crown Company? A. The Crown Company had its work reduced very seriously since 1973.

Q. Is an officer of the Crown Company present in this courtroom? A. Yes.

Q. Who is that? A. Mr. Howard Fertell.

Q. What is his position with Crown? A. He is a principal, one primarily in charge of the operation of the factory.

Q. What happened to the employees of the Crown Company? A. Their earnings were reduced, I would say, more than one-half.

MR. ROSENBERG: Objection, he can't say he has any competence or knowledge. Mr. Fertell is available to testify if it is necessary.

THE COURT: Sure. Let's go on.

[121] Q. Do you represent those employees? A. I do.

Q. Do you have knowledge of their earnings? A. I do.

Q. Tell us what happened to their earnings. A. Their earnings have been reduced by over 50 per cent since the imposition of the embargo.

Q. What happened to the number of employees? A. It has been similarly reduced.

Q. Are you familiar with the promotional effort of the fur industry?

A. I am.

Q. Would you tell the Court when that was organized and under what circumstances? A. Well, the promotional effort of the industry dates back quite a few years. The most recent was the organization of the American Fur Industry in 1971, an organization which comprises all of the different sectors that make up the industry, the manufacturers, the jobbers, the wholesalers, the dealers, the dressers and dyers and the other parts of the industry, for the purpose of promoting the American-made product, earning the American dressed and dyed skin or the American manufactured skin, as the case might be.

[122] Q. How is the effort financed? A. It is financed by, in some cases, by a tax on the — a voluntary tax that the manufacturers have agreed to pay based on their payroll, and in some cases, as in the case of the fur dealers, either by contribution or by a per bundle charge that is paid at the auction company level.

Q. What has the American fur industry, the conglomerate, done to carry out this effort? A. It has conducted a very active public relations campaign in order to promote the American product, the American dressed and dyed product, the American manufactured product.

MR. ROSENBERG: Objection, your Honor, this is conclusionary.

THE COURT: No, go ahead.

Q. There has been some testimony here about a Calderon Trucking Company. You heard Mr. Fabrykant testimony about that? A. I did.

Q. Had you ever heard of this company? A. I never heard of the Calderon Trucking Company.

Q. Have you asked any trucking companies at any time to refuse to deliver to or to pick up from the charging party? A. No.

[123] Q. Have you asked any business agent or representatives of the FLM Joint Board to ask trucking companies to refuse to deliver to or to pick up from — A. No.

Q. — the charging party?

Have you asked any pickets to ask shipping companies, trucking companies, to refuse to deliver to or pick up from the charging party? A. No.

Q. As a matter of fact, do the picket signs say that — could they not — that the appeal is to consumers only, to customers only and not to an employee? A. That is correct.

Q. Are you acquainted with the businessmen who do business with South American? A. I am.

Q. Have you asked any businessmen to refuse to do business with South American? A. No, I haven't.

Q. Have you asked any employees of any customers of South American to refuse to handle the Argentina dressed skins? A. I have not.

[124] Q. Do you know of any such refusals at any place? A. I don't.

Q. Prior to this incident May 9th or thereabouts, had you known anything about Mainwald — Mirode Company? Had you had any dealings with them? A. I had no dealings with them. I have learned since then that —

THE COURT: No, prior to that time is the question.

A. No, I had no dealings with Mainwald prior to that time.

Q. Was the Mirode Company ever the subject of a conversation between you and Mr. Fabrykant or anyone from South American? A. No.

Q. Do you have any interest in whether or not Fabrykant does business with Mirode? A. No.

MR. CAMMER: Your witness.

MR. MARKEWICH: I have no questions.

CROSS-EXAMINATION

BY MR. ROSENBERG:

Q. Mr. Foner, can you tell us, are there any other unions a member of the joint FLM Board? If I am using the name incorrectly, please correct me. A. I am sorry?

Q. How many unions form the joint FLM Board?

THE COURT: You mean local unions?

Q. Local unions. A. The FLM joint board is a local union.

Q. Thank you. You described that the fur industry had engaged in a promotional program. What did they do to promote the American fur industry? What activities did they engage in? A. They sponsor fashion shows, they sponsor television programs, they prepare ads which are made available for retailers all over the country. They engage in all of these activities in order to promote the domestic product.

Q. What was the name of the organization that was formed in 1971 again? A. The American Fur Industry.

Q. Who are the members, broad groupings of the American Fur Industry? A. To my knowledge, the American Fur Industry is what I would call a delegated body consisting of representatives of the fur manufacturers.

Q. Let me stop you for a second. When you use the term fur manufacturers, can you describe what a fur manufacturer does, for the Court?

A. Yes, a fur manufacturer converts a skin that has been processed, dressed, into a fur garment by putting a number of these together into a garment.

Q. Continue with other types of groups that are members.

A. Fur dealers.

Q. What does a fur dealer do? A. A fur dealer purchases skins usually either at the auction level or from, directly from, farmers, ranchers, either here or in other countries, and sells them to manufacturers usually so that they can be converted into fur garments.

Q. What other types? A. Fur dressers and dyers.

Q. What do they do? A. These are people who process the raw skins through a tanning process and then through a dye to make it more easily manufacturable into a garment.

Q. Do these fur dressers perform their work for the skin dealers or fur dealers or do they perform them for the fur manufacturers? A. Both.

[127] Q. Are there any other groups or generic groups that are members of this American fur industry? A. Yes, the fur action companies. These are the companies where the sale of skins take place on an auction level. Hudson Bay Company is the primary company in this country.

Q. As part of this promotional effort, has the American Fur Industry suggested in any way to the fur manufacturers that they should make every effort to buy skins which have been dressed here in the United States?

A. Yes.

Q. What were those efforts? A. To my knowledge, the emphasis at the meetings that take place of all of the bodies, promotional bodies, before and since the American Fur Industry has been upon the utilization of products that are either processed here or, of course, ultimately manufactured here, but the emphasis has been for the industry to cooperate one segment with the other in order to engage in a mutual -- for the mutual benefit of all these segments.

Q. Have any of the segments of the industry encouraged skin dealers not to purchase dressed Argentina skins? Has the manufacturer said, "We would prefer that you don't buy dressed Argentina skins, that we would prefer rather that you buy skins dressed here in the United States"?

[128] A. That has been part of the entire program, to encourage the interplay of the bodies within the American Fur Industry — has been to encourage each, at each level of the industry, to encourage the utilization of the American processed or manufactured item as opposed to utilizing an imported — either an imported dressed and dyed skin or an imported garment.

The manufacturers who manufacture here obviously are promoting their garments which are made here and everything that they do, the labels that they put upon them indicate that these are garments that are manufactured in the United States.

There is a fur label authority under which — which gives them a label which they put on the skin indicating that it is manufactured here.

Similarly, the dressers and dyers have always sought to impress upon the manufacturers and the dealers the desirability of promoting the whole industry by utilizing skins that are processed here.

Q. You referred to a taxation which the fur industry had placed on various types of goods. Can you go into a little more detail and explain this taxation for us?

MR. CAMMER: Objection, your Honor, it is irrelevant.

[129] THE COURT: It seems like it is. How is it relevant, counsel?

MR. ROSENBERG: I will withdraw the question, your Honor.

Q. Mr. Foner, on or about April 8, did you have a meeting with Mr. Fabrykant along with Mr. Catani and Mr. Sobin? A. On or about May 8th?

Q. On or about. A. It was in May.

Q. It was in May. At that time did you exhibit to Mr. Fabrykant proposed picket signs which were going to be used? A. I did.

Q. And those picket signs bore the legend Local 2F and 3F, and the joint board, did they not? A. That is correct.

Q. And the pickets who were stationed out in front of Mr. Fabrykant's shop were picketing on behalf of both Local 2F, 3F and the joint board?

A. Actually the initial picketing was done — the first picketing for the first day or so was done by members of the FLM Joint Board. Thereafter Locals 2F and 3F undertook to provide pickets for the picket line along with the
[130] Joint Board.

Q. With regard to broadtail, you stated those are baby lamb. The term "broadtails" are those baby lamb? A. It is a lamb, a skin as distinguished from the better known Persian lamb that comes from South America.

Q. Is there any equivalent to a broadtail here in the United States?

THE COURT: Sustained.

Q. Let's turn now to Crown Monarch. Is that the correct name of the firm? A. Crown Monarch.

Q. You stated that their earnings were reduced. A. The workers' earnings were reduced.

Q. You were not referring, therefore, to the earnings of Crown Monarch, be it a corporation or a company? A. I have no knowledge about the earnings of the company. I know about the workers' earnings.

Q. Did you negotiate any wage reductions or contract provisions with Crown Monarch to ease —

MR. CAMMER: Objection, irrelevant.

THE COURT: What is the relevancy?

Q. I want to find out what you mean by earning reduction, Mr. Foner.

A. These workers work on piecework and therefore their earnings are directly related to the amount of work that they get. They are not what
[131] is commonly known as time workers.

So that if the number of skins coming into a shop is drastically reduced while their piece rate per skin may remain the same, their earnings will be reduced.

Q. One other area.

Has your union applied to the Department of Labor for relief under the Trade Act of 1974? A. We have applied to the Tariff Commission for relief under aspects of the tariff law. We have not specifically applied under the Trade Act of 1974.

MR. ROSENBERG: I have no further questions, your Honor.

THE COURT: Step down.

(Witness excused.)

HOWARD FERTELL,

called as a witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

MR. CAMMER:

Q. Mr. Fertell, what is your business or occupation? A. We are known as dressers and dyers of fur-bearing animals. Fur skin.

[132] Q. What is the name of your company? A. Crown Monarch, Inc.

Q. What is your position in that company? A. President of the company.

Q. How long have you been in the fur dressing and dyeing business?

A. Crown Monarch has been in 25 years, but I have been in the business 55 years.

Q. Are you familiar with the imposition of an embargo by the Argentine Government upon lambs, broadtail? A. Yes.

MR. ROSENBERG: Your Honor, we concede this embargo. I don't see we have to -

THE COURT: All right. They are conceding it. Let's go on to something else.

Q. Would you describe the effects of the embargo upon your company and your workers? A. Well, two years ago when this had happened, from

one year or one season to another, which runs around this time of year, we depend upon the purchasing power of the New York market to buy Argentinian lambs for the purpose of converting into broadtail. And when this happened we didn't receive any goods since July two years ago, up to the present time.

[133] THE COURT: You mean to say you received absolutely no goods?

THE WITNESS: No goods.

THE COURT: Nothing?

THE WITNESS: Well, some of the dealers in the market were encouraged to buy some dressed goods in Argentina which they did.

THE COURT: I am not worried about them. I am talking about you and your company. You have gotten nothing?

THE WITNESS: Just a handful of skins. Nothing. I would say nothing.

THE COURT: Okay. Go ahead.

Q. Has that resulted in any layoffs of workers by your company?

A. Oh, yes. We ran from 100-some odd people, we are down now to around 50. And they are not working time at all, much time.

Q. What was the average earnings of your employees before the embargo?

A. They used to earn between twelve and \$14,000 a year.

Q. What are they earnings now? A. Oh, they are down to five, some are less.

[134] Q. Are you able to say — A. It is a piecework system.

Q. — based on your experience and work in the industry, are you able to say whether manufacturers prefer American dressed skins or Argentine dressed skins? A. I would say that Crown Monarch's product is the leading product of the world, after all those years of perfection, and has been in demand over the years, and now these same people can obtain this product, and have slowly laid off people and have given up the item, and have transferred to another item.

Q. What is the effect on the quality of the garment that the ultimate consumer buys resulting from the use of Argentine dressed skin? A. I would say that the Argentinian skin, dressed and dyed in Argentina, the knowhow or the processing, the art or the technical ability is lacked to a great degree; that the product has a lot of repercussions after it is made by the manufacturers.

Q. Apart from the ability of a person thoroughly familiar with the art of looking at a dressed skin, is it possible for a lay person to look at a skin and to know that it has been dressed and dyed in Argentina and not in the United States? A. Well, mostly all the goods that comes from Argentina

[135] usually have a stamp, a trademark on the leather. So does the goods that we process have our trademark on each and every skin before it leaves the plant.

Q. Apart from the trademark, is it possible to tell whether a skin has been dressed and dyed in Argentina or in the United States? A. Well, a good mechanic or a man that handles the goods getting it in his hand and the fell and all that goes with it, I would say yes.

Q. And if you were not a good mechanic and weren't skilled in the arts, could he or she tell? A. Well, he can observe it, yes.

THE COURT: In other words, it is possible but not necessarily probable?

THE WITNESS: It is very possible for him to see that it is not what he expects and what it should be.

THE COURT: Okay.

MR. CAMMER: Thank you very much.

THE COURT: Mr. Markewich?

MR. MARKEWICH: No further questions.

THE COURT: Mr. Rosenberg?

CROSS-EXAMINATION

BY MR. ROSENBERG:

Q. Mr. Fertell, is your process of dressing a patented process?

[136] A. No, it is not. It is a process of 35 or 40 years of trial and error at high costs and teaching the people of the organizations who we have, to do the job in the plant and naturally as time goes on you lose the people, and you lose the teaching.

Q. You sell only to fur manufacturers? A. We sell to fur manufacturers, dealers. We dress and dye for anybody who approaches us because that is our business, a service charge. We don't own the skins.

Q. Do you dress and dye for the ultimate consumer, a retail purchaser?

A. We don't dress and dye for a retailer unless he has a substantial amount of skins that he has bought from a dealer.

MR. ROSENBERG: I have no further questions.

THE COURT: Step down, sir.

(Witness excused.)

THE COURT: Anybody else?

MR. CAMMER: Respondent rests, your Honor.

THE COURT: How about the respondents Local 2F and 3F?

MR. MARKEWICH: Respondents Local 2F and 3F rest, your Honor.

[137] THE COURT: All right, fine.

Any rebuttal?

MR. ROSENBERG: No rebuttal, your Honor.

THE COURT: Okay. Do you want to put in any further papers or anything like that?

MR. MARKEWICH: Yes, your Honor. Just a technical point.

THE COURT: Sure.

MR. MARKEWICH: I would like these Court exhibits for identification marked in evidence.

THE COURT: Do you object?

MR. ROSENBERG: I see no purpose. They weren't used for any examination. They are totally irrelevant.

MR. CAMMER: No position, your Honor.

THE COURT: That is no position. Mark them in evidence.
(Court Exhibits 1 through 4 were received in evidence.)

THE COURT: Go ahead. Anything else?

MR. MARKEWICH: The affidavits of Fabrykant made to the board, I would like to have marked for identification.

THE COURT: You mean the originals as opposed to the ones that are attached?

[138] MR. MARKEWICH: Any copy is good enough. The board has refused to permit any identification of them for future use. And for all I know, there may be a board trial in this matter.

THE COURT: Wait a second. What affidavits are we talking about?

MR. ROSENBERG: Your Honor, if I may —

MR. MARKEWICH: Affidavits which were handed to me at the conclusion of Fabrykant's direct testimony which I was not privy to until that point.

THE COURT: Mark them for identification.

MR. MARKEWICH: Thank you.

MR. ROSENBERG: Your Honor, if I may be heard, under Jencks rule, we provide these to Mr. Markewich —

MR. MARKEWICH: We are in court, your Honor, we are not under board rules.

MR. ROSENBERG: — for their use under cross-examination of Mr. Fabrykant. They were given the opportunity to use these. They didn't use the affidavits or any portion of them to impeach Mr. Fabrykant, and after providing counsel with the opportunity to use these for cross-examination the

board wants them back in its possession. They will again be turned over to the parties after the witness has testified on direct in any proceeding before the board for use on cross-examination by counsel, but we feel that we

[139] shouldn't give them to them prior to that time.

In fact to do so would be, we feel, contrary to our obligations under the Jencks rule, to turn them over for purposes of cross-examination only.

MR. MARKEWICH: I didn't want them, your Honor, I just want to make sure they are the same ones, that is why I want them identified.

THE COURT: Sure. That is what they are going to be, too. There are going to be marked for identification.

Anything else? Any other technicalities to be cleaned up?

All right. Does everybody here want findings and conclusions?

MR. CAMMER: Yes, your Honor.

MR. MARKEWICH: I will be glad to supply them for you, your Honor.

THE COURT: I assume, gentlemen, that you will take them in the form of an opinion, also, right?

MR. CAMMER: Sure.

MR. ROSENBERG: Certainly, your Honor.

THE COURT: Does anybody else have anything that you want to inform me about?

[140] MR. CAMMER: I know you don't want to hear, are you willing to hear just a very short further argument?

THE COURT: I think you made your points already before.

MR. CAMMER: Okay.

THE COURT: I would like to hear the answer to that one question I asked before from the board.

MR. ROSENBERG: Your Honor, there is one other matter.

THE COURT: Do you remember the question?

MR. ROSENBERG: I don't remember the question, your Honor.

THE COURT: Okay. Tell me where the labor dispute is.

MR. ROSENBERG: You mean the primary labor dispute?

THE COURT: Yes.

MR. ROSENBERG: There may very well not be any, your Honor. But it is not essential under the statute that there be one. It is only required that there is pressure being brought on a neutral party to a dispute not his own, with an object of his ceasing business with some other person.

[141] Here we have the unions bringing pressure to bear on South American to cease doing business with Southern Skin & Fur in Argentina, and with the Mirode Company in Jersey. And that is all that is required under the statute.

THE COURT: Wait a second.

MR. JARVIS: Your Honor, can I say a few words or will your Honor bar me from talking?

THE COURT: No, sit down.

MR. MARKEWICH: I have no objection to Mr. Jarvis addressing the Court.

THE COURT: No. Mr. Rosenberg, you made a statement. I will give you until three o'clock tomorrow afternoon to reconsider it.

MR. ROSENBERG: If I --

THE COURT: No, no, go back and talk to the other folks. Think about it for a while. Reconsider it between now and three o'clock tomorrow afternoon. If you do want to reconsider it and perhaps rephrase it, do it in the form of a letter. Send a copy of the letter to your opponents.

Three o'clock tomorrow afternoon.

MR. ROSENBERG: Your Honor, in that letter, if I may, we would like to call the Court's attention to two or three cases involving the National Maritime Union and Cuba boycotts, which were touched on by Mr. Foner or rather Mr. Cammer in his impassioned plea about selling certain products.

[142]

THE COURT: He almost made you 30 years younger.
Go ahead.

MR. ROSENBERG: We would like to call that to the Court's attention in this letter, also.

THE COURT: You may give me the citation.

MR. ROSENBERG: Yes, and our views on those cases.

THE COURT: Sure, go ahead.

MR. JARVIS: I wanted to bring to the attention of the Court, if I may, that the citations that were cited here refer to picketing, your Honor, consumer goods and not to wholesalers, and I think the line of citations that have been brought out by Mr. Markewich and Mr. Cammer will bear out my opinion that this is not a case, your Honor, where my client is selling any goods at all to consumers; that he is selling directly to wholesalers and manufacturers who in turn employ labor, your Honor, and create jobs.

And I believe the entire presentation to this Court was thwarted and presented in a fashion as if labor is being deprived of any jobs due to the operation of my clients.

[142a] That is what I wanted to bring to the attention of the Court.

THE COURT: All right.

Anything else?

All right, gentlemen, you have until three o'clock tomorrow.

[October 3, 1975]

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OPINION AND ORDER

KEVIN THOMAS DUFFY, D.J.

Sidney Danielson, Regional Director for Region 2 of the National Labor Relations Board (hereinafter "NLRB") has petitioned on behalf of the NLRB

for an order pursuant to § 10(1) of the National Labor Relations Act (hereinafter "NLRA"), 29 U.S.C. § 160(1), enjoining (1) the Fur Dressers, Local No. 2F, (2) the Fur and Floorworkers Union, Local 3, and (3) the Joint Board of Fur Leather and Machine Workers, all of the Amalgamated Meat Cutters and Butchers Workmen of North America, AFL-CIO, from engaging in conduct allegedly violative of § 8(b)(4)(ii)(B) of the NLRA, 29 U.S.C. § 158(b)(4)(ii)(B).

The facts giving rise to the petition were presented at a hearing before me and are as follows. South American Fur and Skin Co., Inc. (hereinafter "South American"), a New York corporation, imports furs and skins from Southern Skin Trading Corp. (hereinafter "Southern Skin"), an Argentinian corporation. Apparently, according to Argentinian law, a maximum of 20 per cent of the skins exported by a given company can be "raw" or unprocessed skins. The balance of skins exported must first be "dressed" or processed. Since coming into existence in April of 1975, South American has imported dressed skins.

Pursuant to an agreement with Mirode Co., a New Jersey company, South American sends the imported dressed skins to Mirode for some additional processing before selling the skins to manufacturers. Mirode apparently has a collective bargaining agreement with a local of the International Brotherhood of Teamsters, Respondent Locals 2F and 3 at one time had been involved in a representation dispute with Mirode which had occasioned the filing by Mirode, with the Newark office of the NLRB, of an unfair labor practice charge against the two locals. That dispute was settled by a consent order without any finding or admission of culpability by the locals.

In late April and early May, Philip Fabrykant, President and sole employee of South American, was approached on various occasions by Henry Foner, the president of respondent Joint Board of Fur Leather and Machine

Workers, by Jack Mazin and Seymour Sobin of Local 2F, and by Paul Catani of Local 3, all of whom expressed displeasure with South American's importation of dressed skins. According to Mr. Fabrykant the representatives of respondents warned him that he would have "trouble", that customers would return skins as defective, and that the unions would picket his business if the importation of dressed skins was not curtailed.

There was also a suggestion that Fabrykant send the dressed furs out to union shops for additional processing at the full cost of dressing, in which case no picketing would be caused by the union organizers. Fabrykant apparently rejected this suggestion as economically infeasible.

On May 8, 1975, the respondents commenced picketing South American. The signs read:

Please Save Our Jobs
Don't Buy Argentine Dressed Fur Skins
Sold by South American Fur & Skin Company
Local 2F and 3F, Joint Board, AMC
This is an appeal to consumers and customers and
not to employees.

According to respondents, their picketing was prompted by a desire to preserve and create jobs for members of the unions in an allegedly dying industry. Various union and industry members testified to the attrition over recent years in the number of jobs and work available to fur dressers in New York.

On May 9, 1975, when Mirode employees came to pick up some skins, Mazin and Catani allegedly warned Fabrykant that if he allowed the skins to leave the store that Fabrykant would be "a dead man in the market." On May 12, 1975, when Mirode employees returned with the skins a fight developed between the pickets and the Mirode employees.

At the hearing on the petition, respondent Locals 2F and 3 agreed to the entry of an order enjoining them from engaging in any violence, interfering with pickups and deliveries, and from blocking the ingress or egress from South American.¹ They argued that the basis for their consent was that the incidents mentioned above would not be repeated and should not bear on the question of whether the picketing by itself justified the entry of a §10(1) injunction.

The NLRB, in support of its petition for a § 10(1) injunction, argues that the respondents have no primary dispute with South American. Arguably, according to petitioner, the respondents have disputes with Mirode and Southern Skins, both of whom are the ultimate targets of respondents' picketing of South American, a neutral. That is, the object of the picketing is to force South American to cease doing business with Mirode and Southern Skins.

In any case, petitioner contends that a dispute with a primary employer is not a *sine qua non* of a § 8(1)(4)(ii)(B) violation. See *National Maritime Union v. N.L.R.B.*, 342 F.2d 538, 543 (2d Cir.), *cert. denied*, 382 U.S. 835 (1965). As long as the prohibited purpose of forcing a neutral to cease doing business with another is present, so the argument runs, the Act is violated.

The Second Circuit has recently ruled in *Danielson v. Joint Board of Coat, Suit & Allied Garment Wkrs. Union*, 494 F.2d 1230 (2d Cir. 1974), that the district court is not a mere rubber stamp in petitions by the NLRB for § 10(1) injunctions. Among the standards mentioned by that court were a true "reasonable cause" standard, a significant possibility that the Board could enter an enforceable order, or that the district court not be convinced that the General Counsel's legal position is wrong. Given this standard, a meaningful examination of the merits is necessary.

In the course of my examination of this case, several problems have arisen. I have serious doubts as to whether or not a labor dispute of any sort is in fact present in this case. In fact, the NLRB admitted at the

hearing that there may well be no labor dispute. If there is no labor dispute at best the case presents the question as to whether a United States labor organization can voice its opposition to a policy of a foreign government.

As noted above, the NLRB relies on the *National Maritime Union* case for the proposition that a dispute with a primary employer is not necessary in a § 8(b)(4)(B) case. In that case, however, there was a dispute between two rival unions which the court found to be a true labor dispute affecting employers and employees.

In deciding that case the Second Circuit distinguished a case more nearly in point with my inquiry to the NLRB as to where the labor dispute lies in this case. In *N.L.R.B. v. International Longshoremen's Assoc.*, 332 F.2d 992 (4th Cir. 1964) the court refused to enforce a cease and desist order of the NLRB because it found no labor dispute had been presented over which the NLRB had jurisdiction.² There a refusal by the union to supply men to unload a ship which had engaged in trade with Cuba was found to be a purely political action, not one based on the "terms . . . or conditions of employment." See 29 U.S.C. § 152(9) for the definition of "labor dispute." Absent any "labor dispute," the Fourth Circuit held that there was no jurisdiction under the NLRA for the issuance of the order.

In subsequent cases the *International Longshoremen's* case has been often distinguished on the facts. Almost uniformly courts have held that the particular situation present in the *International Longshoremen's* case was a purely political dispute as opposed to the labor-type disputes generally presented. See, e.g., *N.L.R.B. v. Twin City Carpenters Dist. Council*, 422 F.2d 309 (8th Cir. 1970); *Mountain Navigation Co., Inc. v. Seafarers Int'l Union of North America*, 348 F.Supp. 1298 (W.D.Wis. 1971). In a case closely related to the *National Maritime Union* case discussed above, the D.C. Circuit criticized the reasoning in *International Longshoremen's* and noted that the

term "labor dispute" is neither mentioned in § 8(b)(4)(ii)(B) nor does the NLRA require a "labor dispute" as a jurisdictional prerequisite. *National Maritime Union v. N.L.R.B.*, 346 F.2d 411, 415 (D.C. Cir.), *cert. denied* 382 U.S. 840 (1965).

This petition presents a factual situation closer to *International Longshoremen's* than other cases dealing with the problem. Arguably, the respondents' concerns are more work-related than political and therefore may well fall within the broad definition of a "labor dispute" as a "controversy concerning terms . . . or conditions of employment . . . regardless of whether the disputants stand in the proximate relation of employer and employee." 29 U.S.C. § 152(9) (emphasis added).

However, to the extent that a labor dispute does exist, if it does, in this case I am convinced that the dispute is with South American, the company being picketed. The dispute centers on the unions' displeasure with South American's importation of dressed skins. It is this practice which they seek to halt.

Clearly this is not the classical secondary boycott situation where a union, in an attempt to affect a primary employer with which it has a dispute, pickets a secondary or neutral party. Nor is this a case like the *National Maritime Union* cases where there was no primary employer, but the boycotted shipowners were clearly neutrals in the dispute. Those cases found the neutrality of the victim to be a central concern. See 346 F.2d at 418-19; 342 F.2d at 543-44. Here, the picketed company is not a neutral victim of some unrelated labor dispute. I find that neither Mirode nor Southern Skins is the primary object of a dispute in which South American is a neutral.

Either no labor dispute exists in which case I am inclined to adopt the Fourth Circuit's reasoning that jurisdiction is lacking³ and the picketing is protected by the First Amendment, or a labor dispute exists in which South

American is the primary rather than neutral target and therefore the picketing is protected by the primary picketing proviso to § 8(b)(4)(ii)(B).

It was the NLRB's position in its petition for an injunction that "Respondents have no primary labor dispute with South Amerocon" [sic]. I find myself convinced that either the position of the NLRB is wrong on this point or the real dispute is with the Argentinian laws — a situation involving international lobbying and activity protected by the Bill of Rights, United States Constitution, Amendments 1-10. Such a situation does not require this Court to enter the requested order.

For all the reasons enunciated above the petition for an injunction is denied and the case dismissed. See *Danielson v. Joint Board of Coat, Suit & Allied Garment Wkrs. Union*, 494 F.2d 1230 (2d Cir. 1974).

SO ORDERED.

/s/ Kevin Thomas Duffy
U.S.D.J.

Dated: New York, New York
October 3, 1975.

FOOTNOTES

¹ Because of the disposition of this case by this opinion no order has been signed pursuant to the stipulation.

² An alternative ground for the Fourth Circuit's refusal to enforce the order was its finding that no unfair labor practice had been committed.

³ The Fourth Circuit's conclusion has additional appeal if § 10(1) is read as an exception to the anti-injunction provisions of the Norris-LaGuardia Act which apply only where there exists a "labor dispute." See 29 U.S.C. § 101. See also *Sears, Roebuck & Co. v. Carpet, Linoleum, Soft Tile and Resilient Floor Covering Layers, Local Union No. 419*, 410 F.2d 1148 (10th Cir. 1969). Section 113(c) of Title 29, U.S.C., the definitional section on "labor dispute" of the Norris-LaGuardia Act, is almost identical to 29 U.S.C. § 152(a), the definitional section in "labor dispute" in the NLRA.

A portion of the Senate Committee Report on § 10(1) explained that because of the nature of certain unfair labor practices "the committee is convinced that additional procedures must be made available under the National Labor Relations Act in order to adequately protect the public welfare which is inextricably involved in a labor dispute." S. REP. No. 105 on S. 1126, p. 8, quoted in *Amazon Cotton Mill Co. v. Textile Workers Union*, 167 F.2d 183 (4th Cir. 1948).

United States Court of Appeals

FOR THE SECOND CIRCUIT

SIDNEY DANIELSON, Regional Director, Region 2
of the National Labor Relations Board, for and on
behalf of the NATIONAL LABOR RELATIONS
BOARD,

Petitioner,

v.

FUR DRESSERS, LOCAL NO. 2F, AMALGAMATED
MEAT CUTTERS AND BUTCHERS WORKMEN OF
NORTH AMERICA, AFL-CIO: and FUR FLOORWORKERS
UNION, LOCAL NO. 3F, AMALGAMATED MEAT
CUTTERS AND BUTCHERS WORKMEN OF NORTH
AMERICA, AFL-CIO: and JOINT BOARD OF FUR
LEATHER AND MACHINE WORKERS, AMALGAMATED
WORKMEN OF NORTH AMERICA, AFL-CIO,

Respondents.

Case No. 75-6107

CERTIFICATE OF SERVICE

I hereby certify that I have served by hand (by mail) two copies of the
APPENDIX in the above-entitled case, on
the following counsel of record, this 26 day of November 1975

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